

child's estate if the child's action is required by a state, the United States, or a foreign government;

(5) *except as provided by Section 264.0111*, the right to the services and earnings of the child;

(6) the right to consent to the child's marriage, enlistment in the armed forces of the United States, medical and dental care, and psychiatric, psychological, and surgical treatment;

(7) the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;

(8) the right to receive and give receipt for payments for the support of the child and to hold or disburse funds for the benefit of the child;

(9) the right to inherit from and through the child;

(10) the right to make decisions concerning the child's education; and

(11) any other right or duty existing between a parent and child by virtue of law.

SECTION 3. Subchapter A, Chapter 264, Family Code, is amended by adding Section 264.0111 to read as follows:

Sec. 264.0111. MONEY EARNED BY CHILD. (a) A child for whom the department has been appointed managing conservator and who has been placed by the department in a foster home or child-care institution as defined by Chapter 42, Human Resources Code, is entitled to keep any money earned by the child during the time of the child's placement.

(b) The child may deposit the money earned by the child in a bank or savings account subject to the sole management and control of the child as provided by Section 34.305, Finance Code. The child is the sole and absolute owner of the deposit account.

(c) If a child earns money as described by this section and is returned to the child's parent or guardian, the child's parent or guardian may not interfere with the child's authority to control, transfer, draft on, or make a withdrawal from the account.

(d) In this section, a reference to money earned by a child includes any interest that accrues on the money.

(e) The department may adopt rules to implement this section.

SECTION 4. This Act takes effect September 1, 2001.

Passed the Senate on April 20, 2001: Yeas 30, Nays 0, one present, not voting; passed the House on May 23, 2001, by a non-record vote.

Approved June 14, 2001.

Effective September 1, 2001.

CHAPTER 965

H.B. No. 2912

AN ACT

relating to the continuation and functions of the Texas Natural Resource Conservation Commission; providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. ADMINISTRATION AND POLICY

SECTION 1.01. Section 5.013, Water Code, is amended by adding Subsection (c) to read as follows:

(c) This section allocates among various state agencies statutory authority delegated by other laws. This section does not delegate legislative authority.

SECTION 1.02. Section 5.014, Water Code, is amended to read as follows:

Sec. 5.014. SUNSET PROVISION. The Texas Natural Resource Conservation Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2013 [2004].

SECTION 1.03. Section 5.052(c), Water Code, is amended to read as follows:

(c) Appointments to the commission shall be made without regard to the race, color, disability [handicap], sex, religion, age, or national origin of the appointees.

SECTION 1.04. Section 5.053(a), Water Code, is amended to read as follows:

(a) A person may not be a member of [is not eligible to serve on] the commission if the person or the person's spouse:

(1) is registered, certified, licensed, permitted, or otherwise authorized by the commission;

(2) is employed by or participates in the management of a business entity or other organization regulated by the commission or receiving money [funds] from the commission;

(3) [(2)] owns or [;] controls, [or has,] directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by [the commission] or receiving funds from the commission; or

(4) [(3)] uses or receives a substantial amount of tangible goods, services, or money [funds] from the commission other than compensation or reimbursement authorized by law for commission membership, attendance, or expenses.

SECTION 1.05. Subchapter C, Chapter 5, Water Code, is amended by adding Section 5.0535 to read as follows:

Sec. 5.0535. REQUIRED TRAINING PROGRAM FOR COMMISSION MEMBERS. (a) A person who is appointed to and qualifies for office as a member of the commission may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the legislation that created the commission;

(2) the programs operated by the commission;

(3) the role and functions of the commission;

(4) the rules of the commission, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the commission;

(6) the results of recent significant internal and external audits of the commission;

(7) the requirements of:

(A) the open meetings law, Chapter 551, Government Code;

(B) the public information law, Chapter 552, Government Code;

(C) the administrative procedure law, Chapter 2001, Government Code; and

(D) other laws relating to public officials, including conflict-of-interest laws; and

(8) any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(c) A person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.06. Section 5.054, Water Code, is amended to read as follows:

Sec. 5.054. REMOVAL OF COMMISSION MEMBERS. (a) It is a ground for removal from the commission *that* ~~[if]~~ a member:

(1) *does not have at the time of taking office the qualifications required by Section 5.053(b);*

(2) *does not maintain during the service on the commission the qualifications required by Section 5.053(b) [for appointment to the commission];*

(3) *is ineligible for membership under Section 5.053(a), 5.059, or 5.060 [(2) violates a prohibition established by Sections 5.059 and 5.060 of this code];*

(4) *cannot, because of illness or disability, [(3) is unable to] discharge the member's [his] duties for a substantial part of the member's term [portion of the term for which he was appointed because of illness or disability]; or*

(5) [(4)] *is absent from more than one-half of the regularly scheduled commission meetings that the member is eligible to attend during each calendar year without an excuse approved [except when the absence is excused] by a majority vote of the commission.*

(b) The validity of an action of the commission is not affected by the fact that it *is* ~~[was]~~ taken when a ground for removal of a member of the commission *exists* ~~[existed]~~.

(c) *If the executive director or a member [of the commission] has knowledge that a potential ground for removal exists, the executive director or member [he] shall notify the presiding officer [chairman] of the commission of the potential [that] ground. The presiding officer [chairman of the commission] shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director or another member of the commission shall notify the member of the commission with the most seniority, who shall then notify the governor and the attorney general that a potential ground for removal exists.*

SECTION 1.07. Sections 5.058(a)-(d), Water Code, are amended to read as follows:

(a) The governor shall designate *a member of the commission as the presiding officer* ~~[the chairman] of the commission to serve in that capacity at the pleasure of [He shall serve as chairman until] the governor [designates a different chairman].~~

(b) The presiding officer ~~[chairman]~~ *[chairman]* may designate another commissioner to act for the presiding officer ~~[him]~~ *[him]* in the presiding officer's ~~[his]~~ *[his]* absence.

(c) The presiding officer ~~[chairman]~~ *[chairman]* shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate for the performance of its duties. The presiding officer ~~[chairman]~~ *[chairman]* or acting presiding officer ~~[chairman]~~ *[chairman]* shall give the other members reasonable notice before holding a special meeting.

SECTION 1.08. Sections 5.059 and 5.060, Water Code, are amended to read as follows:

Sec. 5.059. CONFLICT OF INTEREST. (a) *In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*

(b) *A person may not be a member of the commission and may not be a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:*

(1) *the person is an officer, employee, or paid consultant of a Texas trade association in an industry regulated by the commission; or*

(2) *the person's spouse is an officer, manager, or paid consultant of a Texas trade association in an industry regulated by the commission* ~~[An officer, employee, or paid consultant of a trade association in an industry regulated by the commission may not be a member of the commission or employee of the commission, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a trade association in an industry regulated by the commission be a member of the commission or an employee of the commission grade 17 or over, including exempt employees, according to the position classification schedule under the General Appropriations Act].~~

Sec. 5.060. LOBBYIST PROHIBITION. *A person may not be a member of the commission or act as general counsel to the commission if the person [who] is required to register as a lobbyist under Chapter 305, Government Code, because [by virtue] of the person's [his] activities for compensation [in or] on behalf of a profession related to the operation of the commission [may not serve as a member of the commission or act as the general counsel to the commission].*

SECTION I.09. Section 5.103, Water Code, is amended by adding Subsection (d) to read as follows:

(d) The commission shall include as a part of each rule the commission adopts, and each proposed rule for adoption after the effective date of this subsection, a citation to the statute that grants the specific regulatory authority under which the rule is justified and a citation of the specific regulatory authority that will be exercised. If no specific statutory authority exists and the agency is depending on this section, citation of this section, or Section 5.102 or 5.013, is sufficient. A rule adopted in violation of this subsection is void.

SECTION I.10. Section 5.107, Water Code, is amended to read as follows:

Sec. 5.107. ADVISORY COMMITTEES, WORK GROUPS, AND TASK FORCES ~~[COUNCILS]~~. *(a) The commission or the executive director may create and consult with advisory committees, work groups, or task forces [councils], including committees, work groups, or task forces [councils] for the environment, [councils] for public information, or for any other matter [councils] that the commission or the executive director may consider appropriate.*

(b) The commission shall identify affected groups of interested persons for advisory committees, work groups, and task forces and shall make reasonable attempts to have balanced representation on all advisory committees, work groups, and task forces. This subsection does not require the commission to ensure that all representatives attend a scheduled meeting. A rule or other action may not be challenged because of the composition of an advisory committee, work group, or task force.

(c) The commission shall monitor the composition and activities of advisory committees, work groups, and task forces appointed by the commission or formed at the staff level and shall maintain that information in a form and location that is easily accessible to the public, including making the information available on the Internet.

SECTION I.11. Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.1191-5.1193 to read as follows:

Sec. 5.1191. RESEARCH MODEL. *(a) In this section, "research model" means a mechanism for developing a plan to address the commission's practical regulatory needs. The commission's plan shall be prioritized by need and shall identify short-term, medium-term, and long-term research goals. The plan may address preferred methods of conducting the identified research.*

(b) The commission shall develop a research model. The commission may appoint a research advisory board to assist the commission in providing appropriate incentives to encourage various interest groups to participate in developing the research model and to make recommendations regarding research topics specific to this state. The research advisory board must include representatives of the academic community, representatives of the regulated community, and public representatives of the state at large.

Sec. 5.1192. COORDINATION OF RESEARCH. (a) The commission shall facilitate and coordinate environmental research in the state according to the research model developed under Section 5.1191.

(b) The commission shall explore private and federal funding opportunities for research needs identified in the research model. The commission may conduct, direct, and facilitate research to implement the commission's research model by administering grants or by contracting for research if money is appropriated to the commission for those purposes.

(c) To the degree practicable, the commission, through the research model, shall coordinate with or make use of any research activities conducted under existing state initiatives, including research by state universities, the Texas Higher Education Coordinating Board, the United States Department of Agriculture, the Texas Department of Agriculture, and other state and federal agencies as appropriate.

(d) This section does not authorize the commission to initiate or direct the research efforts of another entity except under the terms of a grant or contract.

Sec. 5.1193. REPORT. The commission shall include in the reports required by Section 5.178 a description of cooperative research efforts, an accounting of money spent on research, and a review of the purpose, implementation, and results of particular research projects conducted.

SECTION 1.12. Subchapter D, Chapter 5, Water Code, is amended by adding Sections 5.127-5.131 to read as follows:

Sec. 5.127. USE OF ENVIRONMENTAL TESTING LABORATORY DATA AND ANALYSIS.

(a) The commission may accept environmental testing laboratory data and analysis for use in commission decisions regarding any matter under the commission's jurisdiction relating to permits or other authorizations, compliance matters, enforcement actions, or corrective actions only if the data and analysis is prepared by an environmental testing laboratory accredited by the commission under Subchapter R or an environmental testing laboratory described in Subsection (b).

(b) The commission may accept for use in commission decisions data and analysis prepared by:

(1) an on-site or in-house environmental testing laboratory if the laboratory is periodically inspected by the commission;

(2) an environmental testing laboratory that is accredited under federal law; or

(3) if the data and analysis are necessary for emergency response activities and the required data and analysis are not otherwise available, an environmental testing laboratory that is not accredited by the commission under Subchapter R or under federal law.

(c) The commission by rule may require that data and analysis used in other commission decisions be obtained from an environmental testing laboratory accredited by the commission under Subchapter R.

(d) The commission shall periodically inspect on-site or in-house environmental testing laboratories described in Subsection (b).

Sec. 5.128. ELECTRONIC REPORTING TO COMMISSION; REDUCTION OF DUPLICATE REPORTING. (a) The commission shall encourage the use of electronic reporting through the Internet, to the extent practicable, for reports required by the commission. An electronic report must be submitted in a format prescribed by the commission. The commission may consult with the Department of Information Resources on developing a simple format for use in implementing this subsection.

(b) The commission shall strive to reduce duplication in reporting requirements throughout the agency.

Sec. 5.129. SUMMARY FOR PUBLIC NOTICES. (a) The commission by rule shall provide for each public notice issued or published by the commission or by a person under the jurisdiction of the commission as required by law or by commission rule to include at the

beginning of the notice a succinct statement of the subject of the notice. The rules must provide that a summary statement must be designed to inform the reader of the subject matter of the notice without having to read the entire text of the notice.

(b) The summary statement may not be grounds for challenging the validity of the proposed action for which the notice was published.

Sec. 5.130. CONSIDERATION OF CUMULATIVE RISKS. The commission shall:

(1) develop and implement policies, by specific environmental media, to protect the public from cumulative risks in areas of concentrated operations; and

(2) give priority to monitoring and enforcement in areas in which regulated facilities are concentrated.

Sec. 5.131. ENVIRONMENTAL MANAGEMENT SYSTEMS. (a) In this section, "environmental management system" means a documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(b) The commission by rule shall adopt a comprehensive program that provides regulatory incentives to encourage the use of environmental management systems by regulated entities, state agencies, local governments, and other entities as determined by the commission. The incentives may include:

(1) on-site technical assistance;

(2) accelerated access to information about programs; and

(3) to the extent consistent with federal requirements:

(A) inclusion of information regarding an entity's use of an environmental management system in the entity's compliance history and compliance summaries; and

(B) consideration of the entity's implementation of an environmental management system in scheduling and conducting compliance inspections.

(c) The commission shall:

(1) integrate the use of environmental management systems into its regulatory programs, including permitting, compliance assistance, and enforcement;

(2) develop model environmental management systems for small businesses and local governments; and

(3) establish environmental performance indicators to measure the program's performance.

SECTION 1.13. Subchapter E, Chapter 5, Water Code, is amended by adding Section 5.1733 to read as follows:

Sec. 5.1733. ELECTRONIC POSTING OF INFORMATION. The commission shall post public information on its website. Such information shall include but not be limited to the minutes of advisory committee meetings, pending permit and enforcement actions, compliance histories, and emissions inventories by county and facility name.

SECTION 1.14. Subchapter E, Chapter 5, Water Code, is amended by adding Section 5.1765 to read as follows:

Sec. 5.1765. PUBLICATION OF INFORMATION REGARDING COMPLAINT PROCEDURES AND POLICIES. The commission shall establish a process for educating the public regarding the commission's complaint policies and procedures. As part of the public education process, the commission shall make available to the public in pamphlet form an explanation of the complaint policies and procedures, including information regarding and standards applicable to the collection and preservation of credible evidence of environmental problems by members of the public.

SECTION 1.15. Sections 5.176 and 5.177, Water Code, are amended to read as follows:

Sec. 5.176. COMPLAINT FILE. (a) The commission shall *maintain a* ~~file on~~ ~~[about]~~ each written complaint filed with the commission *about a matter within the commission's regulatory jurisdiction* ~~[relating to an entity regulated by the commission]~~. The file must include:

- (1) the name of the person who filed the complaint, unless the person has specifically requested anonymity;
- (2) the date the complaint is received by the commission;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint.

(b) The commission shall establish and implement procedures for receiving complaints submitted by means of the Internet and orally and shall maintain files on those complaints as provided by Subsection (a).

Sec. 5.177. NOTICE OF COMPLAINT PROCEDURES; NOTICE OF INVESTIGATION STATUS. (a) The agency shall provide to the person filing the complaint about a matter within the commission's regulatory jurisdiction and to each person who is the subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(b) ~~The [If a written complaint is filed with the commission relating to an entity regulated by the commission, the]~~ commission, at least ~~[as frequently as]~~ quarterly ~~[and]~~ until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of ~~[parties to]~~ the complaint of the status of the investigation ~~[complaint]~~ unless the notice would jeopardize an undercover investigation.

(c) The commission is not required to provide the information described in Subsection (a) or (b) to a complainant who files an anonymous complaint or provides inaccurate contact information.

SECTION 1.16. Subchapter E, Chapter 5, Water Code, is amended by adding Sections 5.1771, 5.1772, and 5.1773 to read as follows:

Sec. 5.1771. COORDINATION OF COMPLAINT INVESTIGATIONS WITH LOCAL ENFORCEMENT OFFICIALS: TRAINING. (a) The commission shall share information regarding a complaint about a matter within the commission's regulatory jurisdiction made to the commission with local officials with authority to act on the complaint in the county or municipality in which the alleged action or omission that is the subject of the complaint occurred or is threatening to occur.

(b) On request, the commission shall provide training for local enforcement officials in investigating complaints and enforcing environmental laws relating to matters under the commission's jurisdiction under this code or the Health and Safety Code. The training must include, at a minimum:

- (1) procedures for local enforcement officials to use in addressing citizen complaints if the commission is unavailable or unable to respond to the complaint; and
- (2) an explanation of local government authority to enforce state laws and commission rules relating to the environment.

(c) The commission may charge a reasonable fee for providing training to local enforcement officials as required by Subsection (b) in an amount sufficient to recover the costs of the training.

Sec. 5.1772. AFTER-HOURS RESPONSE TO COMPLAINTS. (a) The commission shall adopt and implement a policy to provide timely response to complaints during periods outside regular business hours.

(b) *This section does not:*

(1) *require availability of field inspectors for response 24 hours a day, seven days a week, in all parts of the state; or*

(2) *authorize additional use of overtime.*

Sec. 5.1773. COMPLAINT ASSESSMENT. (a) The commission annually shall conduct a comprehensive analysis of the complaints it receives, including analysis by the following categories:

(1) *air;*

(2) *water;*

(3) *waste;*

(4) *priority classification;*

(5) *region;*

(6) *commission response;*

(7) *enforcement action taken; and*

(8) *trends by complaint type.*

(b) In addition to the analysis required by Subsection (a), the commission shall assess the impact of changes made in the commission's complaint policy.

SECTION 1.17. Section 5.178(b), Water Code, is amended to read as follows:

(b) The report due by December 1 of an even-numbered year shall include, in addition:

(1) the commission's recommendations for necessary and desirable legislation; and

(2) the following reports:

(A) the assessments and reports required by Sections 361.0219(c), 361.0232, [361.485,] 361.510, 371.063, and 382.141, Health and Safety Code; ~~and~~

(B) the reports required by Section 26.0135(d) of this code and Section 5.02, Chapter 133, Acts of the 69th Legislature, Regular Session, 1985; *and*

(C) *a summary of the analyses and assessments required by Section 5.1773 of this code.*

SECTION 1.18. Section 5.227, Water Code, is amended to read as follows:

Sec. 5.227. EQUAL EMPLOYMENT OPPORTUNITY POLICY. (a) The executive director or his designee shall prepare and maintain a written policy statement that implements [to assure implementation of] a program of equal employment opportunity to ensure that [whereby] all personnel decisions [transactions] are made without regard to race, color, disability [handicap], sex, religion, age, or national origin.

(b) The policy statement must include:

(1) *personnel policies, including policies relating to recruitment, evaluation, selection, [appointment,] training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and*

(2) *a comprehensive analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law [work force that meets federal and state guidelines;*

~~[(3) procedures by which a determination can be made of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance; and~~

~~[(4) reasonable methods to address appropriately areas of significant underutilization in the commission's work force of all persons for whom federal or state guidelines encourage a more equitable balance].~~

(c) [(b)] The policy statement must:

(1) ~~[shall be filed with the governor's office before November 1, 1985, cover an annual period, and] be updated [at least] annually;~~

(2) ~~be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and~~

(3) ~~be filed with the governor's office. [The governor's office shall develop a biennial report to the legislature based on the information submitted. This report may be made individually or as a part of other biennial reports made to the legislature.]~~

SECTION 1.19. Subchapter F, Chapter 5, Water Code, is amended by adding Section 5.2275 to read as follows:

Sec. 5.2275. STATE EMPLOYEE INCENTIVE PROGRAM. The executive director or the executive director's designee shall provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Subchapter B, Chapter 2108, Government Code.

SECTION 1.20. Section 5.228, Water Code, is amended to read as follows:

Sec. 5.228. APPEARANCES AT HEARINGS. (a) The position of and information developed by the commission shall be presented by the executive director or his designated representative at hearings of the commission and the hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's environment and natural resources, including matters that have been determined to be policies of the state.

(b) The executive director shall be named a party in hearings before the commission in a matter in which the executive director bears the burden of proof.

(c) The executive director may participate as a party in contested case permit hearings before the commission or the State Office of Administrative Hearings for the sole purpose of providing information to complete the administrative record. The commission by rule shall specify the factors the executive director must consider in determining, case by case, whether to participate as a party in a contested case permit hearing. In developing the rules under this subsection the commission shall consider, among other factors:

(1) the technical, legal, and financial capacity of the parties to the proceeding;

(2) whether the parties to the proceeding have participated in a previous contested case hearing;

(3) the complexity of the issues presented; and

(4) the available resources of commission staff.

(d) In a contested case hearing relating to a permit application, the executive director or the executive director's designated representative may not rehabilitate the testimony of a witness unless the witness is a commission employee testifying for the sole purpose of providing information to complete the administrative record.

(e) The executive director or the executive director's designated representative may not assist a permit applicant in meeting its burden of proof in a hearing before the commission or the State Office of Administrative Hearings unless the permit applicant fits a category of permit applicant that the commission by rule has designated as eligible to receive assistance. The commission shall adopt rules establishing categories of permit applicants eligible to receive assistance.

(f) The fact that the executive director is not named as a party in a hearing before the commission is not grounds for appealing a commission decision.

SECTION 1.21. Subchapter F, Chapter 5, Water Code, is amended by adding Section 5.2291 to read as follows:

Sec. 5.2291. SCIENTIFIC AND TECHNICAL SERVICES. (a) In this section, "scientific and technical environmental services" means services, other than engineering services, of a scientific or technical nature the conduct of which requires technical training and professional judgment. The term includes modeling, risk assessment, site characterization and assessment, studies of the magnitude, source, and extent of contamination, contaminant fate and transport

analysis, watershed assessment and analysis, total maximum daily load studies, scientific data analysis, and similar tasks, to the extent those tasks are not defined as the "practice of engineering" under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(b) The procurement of a contract for scientific and technical environmental services shall be conducted under the procedures for professional services selection provided in Subchapter A, Chapter 2254, Government Code.

SECTION 1.22. Section 5.234(b), Water Code, is amended to read as follows:

(b) After an application, petition, or other document is processed, it shall be presented to the commission for action as required by law and rules of the commission. If, in the course of reviewing an application and preparing a draft permit, the executive director has required changes to be made to the applicant's proposal, the executive director shall prepare a summary of the changes that were made to increase protection of public health and the environment.

SECTION 1.23. Sections 5.273 and 5.274, Water Code, are amended to read as follows:

Sec. 5.273. DUTIES OF THE PUBLIC INTEREST COUNSEL. *(a) The counsel shall represent the public interest and be a party to all proceedings before the commission.*

(b) The counsel may recommend needed legislative and regulatory changes.

Sec. 5.274. STAFF; *OUTSIDE TECHNICAL SUPPORT.* *(a) The office shall be adequately staffed to carry out its functions under this code.*

(b) The counsel may obtain and use outside technical support to carry out its functions under this code.

SECTION 1.24. Subchapter A, Chapter 7, Water Code, is amended by adding Section 7.0025 to read as follows:

Sec. 7.0025. INITIATION OF ENFORCEMENT ACTION USING INFORMATION PROVIDED BY PRIVATE INDIVIDUAL. (a) The commission may initiate an enforcement action on a matter under its jurisdiction under this code or the Health and Safety Code based on information it receives from a private individual if that information, in the commission's judgment, is of sufficient value and credibility to warrant the initiation of an enforcement action.

(b) The executive director or the executive director's designated representative may evaluate the value and credibility of information received from a private individual and the merits of any proposed enforcement action based on that information.

(c) The commission by rule may adopt criteria for the executive director to use in evaluating the value and credibility of information received from a private individual and for use of that information in an enforcement action.

(d) A private individual who submits information on which the commission relies for all or part of an enforcement case may be called to testify in the enforcement proceedings and is subject to all sanctions under law for knowingly falsifying evidence. If the commission relies on the information submitted by a private individual to prove an enforcement case, any physical or sampling data must have been collected or gathered in accordance with commission protocols.

SECTION 1.25. Section 361.0231(a), Health and Safety Code, is amended to read as follows:

(a) To protect the public health and environment taking into consideration the economic development of the state, [~~encourage economic development,~~] and assure the continuation of the federal funding for abandoned facility response actions, it is the state public policy that adequate capacity should exist for the proper management of industrial and hazardous waste generated in this state.

SECTION 1.26. Section 26.003, Water Code, is amended to read as follows:

Sec. 26.003. POLICY OF THIS SUBCHAPTER. It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health

and enjoyment, the propagation and protection of terrestrial and aquatic life, *and* the operation of existing industries, *taking into consideration* [~~and~~] the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

SECTION 1.27. Section 27.003, Water Code, is amended to read as follows:

Sec. 27.003. POLICY AND PURPOSE. It is the policy of this state and the purpose of this chapter to maintain the quality of fresh water in the state to the extent consistent with the public health and welfare *and* [~~;~~] the operation of existing industries, *taking into consideration* [~~and~~] the economic development of the state, to prevent underground injection that may pollute fresh water, and to require the use of all reasonable methods to implement this policy.

ARTICLE 2. NOTICE REQUIREMENTS

SECTION 2.01. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.0666 to read as follows:

Sec. 361.0666. *PUBLIC MEETING AND NOTICE FOR SOLID WASTE FACILITIES.* (a) *An applicant for a permit under this chapter for a new facility that accepts municipal solid wastes shall hold a public meeting in the county in which the proposed facility is to be located. The meeting must be held before the 45th day after the date the application is filed.*

(b) *The applicant shall publish notice of the public meeting at least once each week during the three weeks preceding the meeting. The notice must be published in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county.*

(c) *The applicant shall present to the commission an affidavit certifying that the notice was published as required by Subsection (b). The commission's acceptance of the affidavit raises a presumption that the applicant has complied with Subsection (b).*

(d) *The published notice may not be smaller than 96.8 square centimeters or 15 square inches, with the shortest dimension not less than 7.5 centimeters or 3 inches. The notice must contain at least the following information:*

- (1) *the permit application number;*
- (2) *the applicant's name;*
- (3) *the proposed location of the facility; and*
- (4) *the location and availability of copies of the application.*

(e) *The applicant shall pay the cost of the notice required under this section. The commission by rule may establish a procedure for payment of those costs.*

SECTION 2.02. Section 382.056, Health and Safety Code, is amended by adding Subsections (q) and (r) to read as follows:

(q) *The department shall establish rules to ensure that a permit applicant complies with the notice requirement under Subsection (a).*

(r) *This section does not apply to:*

- (1) *the relocation or change of location of a portable facility to a site where a facility permitted by the commission is located if no portable facility has been located at the proposed site at any time during the previous two years; or*
- (2) *a facility located temporarily in the right-of-way, or contiguous to the right-of-way, of a public works project.*

ARTICLE 3. FEES AND RATES

SECTION 3.01. Chapter 5, Water Code, is amended by adding a heading for Subchapter P to read as follows:

SUBCHAPTER P. FEES

SECTION 3.02. Section 5.235, Water Code, is transferred to new Subchapter P, Chapter 5, Water Code, redesignated as Section 5.701, and amended to read as follows:

Sec. 5.701 [~~5.235~~]. FEES. (a) The executive director shall charge and collect the fees prescribed by law. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise. Except as otherwise provided, a fee assessed and collected under this section shall be deposited to the credit of the water resource management account.

(1) Notwithstanding other provisions, the commission by rule may establish due dates, schedules, and procedures for assessment, collection, and remittance of fees due the commission to ensure the cost-effective administration of revenue collection and cash management programs.

(2) Notwithstanding other provisions, the commission by rule shall establish uniform and consistent requirements for the assessment of penalties and interest for late payment of fees owed the state under the commission's jurisdiction. Penalties and interest established under this section shall not exceed rates established for delinquent taxes under Sections 111.060 and 111.061, Tax Code.

(b) Except as otherwise provided by law, the fee for filing an application or petition is \$100 plus the cost of any required notice. The fee for a by-pass permit shall be set by the commission at a reasonable amount to recover costs, but not less than \$100.

(c) The fee for filing a water permit application is \$100 plus the cost of required notice.

(d) The fee for filing an application for fixing or adjusting rates is \$100 plus the cost of required notice.

(e) A person who files with the commission a petition for the creation of a water district or addition of sewage and drainage powers or a resolution for a water district conversion must pay a one-time nonrefundable application fee. The commission by rule may *establish* [set] the application fee in an amount *sufficient to cover* [~~not to exceed~~] the costs of reviewing and processing the application, plus the cost of required notice. *The commission may also use the application fee to cover other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Subsection (p).* This fee is the only fee that the commission may charge with regard to the processing of an application for creation of a water district, addition of sewage or drainage powers, or conversion under this code.

(f) A person who files a bond issue application with the commission must pay an application fee set by the commission. The commission by rule may set the application fee in an amount not to exceed the costs of reviewing and processing the application, plus the cost of required notice. If the bonds are approved by the commission, the seller shall pay to the commission a percentage of the bond proceeds not later than the seventh business day after receipt of the bond proceeds. The commission by rule may set the percentage of the proceeds in an amount not to exceed 0.25 percent of the principal amount of the bonds actually issued. Proceeds of the fees shall be used to supplement any other funds available for paying expenses of the commission in supervising the various bond and construction activities of the districts filing the applications.

(g) The fee for recording an instrument in the office of the commission is \$1.25 per page.

(h) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(i) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level.

(j) The fee for other uses of water not specifically named in this section is \$1 per acre-foot, except that no political subdivision may be required to pay fees to use water for recharge of underground freshwater-bearing sands and aquifers or for abatement of natural pollution.

(k) A fee charged under Subsections (h) through (j) of this section for one use of water under a permit from the commission may not exceed \$50,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$10,000.

(l) The fees prescribed by Subsections (h) through (j) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-half of the fee when the application is filed and one-half within 180 days after notice is mailed to him that the permit is granted. If the applicant does not pay all of the amount owed before beginning to use water under the permit, the permit is annulled.

(m) If a permit is annulled, the matter reverts to the status of a pending, filed application and, on the payment of use fees as provided by Subsections (h) through (l) of this section together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

(n)(1) Each provider of potable water or sewer utility service shall collect a regulatory assessment from each retail customer as follows:

(A) A public utility as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one percent of the charge for retail water or sewer service.

(B) A water supply or sewer service corporation as defined in Section 13.002 of this code shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(C) A district as defined in Section 49.001 of this code that provides potable water or sewer utility service to retail customers shall collect from each retail customer a regulatory assessment equal to one-half of one percent of the charge for retail water or sewer service.

(2) The regulatory assessment may be listed on the customer's bill as a separate item and shall be collected in addition to other charges for utility services.

(3) The commission shall use the assessments collected under this subsection solely to pay costs and expenses incurred by the commission in the regulation of districts, water supply or sewer service corporations, and public utilities under Chapter 13, Water Code.

(4) The commission shall annually use a portion of the assessments to provide on-site technical assistance and training to public utilities, water supply or sewer service corporations, and districts. The commission shall contract with others to provide the services.

(5) The commission by rule may establish due dates, collection procedures, and penalties for late payment related to regulatory assessments under this subsection. The executive director shall collect all assessments from the utility service providers.

(6) The commission shall assess a penalty against a municipality with a population of more than 1.5 million that does not provide municipal water and sewer services in an annexed area in accordance with Section 43.0565, Local Government Code. A penalty assessed under this paragraph shall be not more than \$1,000 for each day the services are not provided after March 1, 1998, for areas annexed before January 1, 1993, or not provided within 4 1/2 years after the effective date of the annexation for areas annexed on or after January 1, 1993. A penalty collected under this paragraph shall be deposited to the credit of the water resource management account to be used to provide water and sewer service to residents of the city.

(7) The regulatory assessment does not apply to water that has not been treated for the purpose of human consumption.

(o) A fee imposed under Subsection (j) of this section for the use of saline tidal water for industrial processes shall be \$1 per acre-foot of water diverted for the industrial process, not to exceed a total fee of \$5,000.

(p) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

- (1) Subsection (b), to the extent those fees are paid by water districts, and Subsections (e), (f), and (n);*
- (2) Sections 13.4521 and 13.4522; or*
- (3) Section 54.037(c).*

(q) Notwithstanding any other law, fees collected for deposit to the water resource management account under the following statutes may be appropriated and used to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under:

- (1) Subsections (b) and (c), to the extent those fees are collected in connection with water use or water quality permits;*
- (2) Subsections (h)-(l);*
- (3) Section 11.138(g);*
- (4) Section 11.145;*
- (5) Section 26.0135(h);*
- (6) Sections 26.0291, 26.044, and 26.0461;*
- (7) Sections 341.041, 366.058, and 366.059, Health and Safety Code; or*
- (8) Section 372.002(d), Health and Safety Code.*

SECTION 3.03. New Subchapter P, Chapter 5, Water Code, is amended by adding Sections 5.702-5.708 to read as follows:

Sec. 5.702. PAYMENT OF FEES REQUIRED WHEN DUE. (a) A fee due the commission under this code or the Health and Safety Code shall be paid on the date the fee is due, regardless of whether the fee is billed by the commission to the person required to pay the fee or is calculated and paid to the commission by the person required to pay the fee.

(b) A person required to pay a fee to the commission may not dispute the assessment of or amount of a fee before the fee has been paid in full.

Sec. 5.703. FEE ADJUSTMENTS. (a) The commission may not consider adjusting the amount of a fee due the commission under this code or the Health and Safety Code:

- (1) before the fee has been paid in full; or*
- (2) if the request for adjustment is received after the first anniversary of the date on which the fee was paid in full.*

(b) A person who pays an amount that exceeds the amount of the fee due because the commission incorrectly calculated the fee or the person made a duplicate payment may request a refund of the excess amount paid before the fourth anniversary of the date on which the excess amount was paid.

(c) A request for a refund or credit in an amount that exceeds \$5,000 shall be forwarded for approval to the commission fee audit staff, together with an explanation of the grounds for the requested refund or credit. Approval of a refund or credit does not prevent the fee audit staff from conducting a subsequent audit of the person for whom the refund or credit was approved.

Sec. 5.704. NOTICE OF CHANGE IN PAYMENT PROCEDURE. The commission shall promptly notify each person required to pay a commission fee under this code or the Health and Safety Code of any change in fee payment procedures.

Sec. 5.705. NOTICE OF VIOLATION. (a) The commission may issue a notice of violation to a person required to pay a commission fee under this code or the Health and Safety Code for knowingly violating reporting requirements or knowingly calculating the fee in an amount less than the amount actually due.

(b) The executive director may modify audit findings reported by a commission fee auditor only if the executive director provides a written explanation showing good cause for the modification.

Sec. 5.706. PENALTIES AND INTEREST ON DELINQUENT FEES. (a) Except as otherwise provided by law, the commission may collect, for a delinquent fee due the commission under this code or the Health and Safety Code:

(1) a penalty in an amount equal to five percent of the amount of the fee due, if the fee is not paid on or before the day on which the fee is due; and

(2) an additional penalty in an amount equal to five percent of the amount due, if the fee is not paid on or before the 30th day after the date on which the fee was due.

(b) Unless otherwise required by law interest accrues, beginning on the 61st day after the date on which the fee was due, on the total amount of fee and penalties that have not been paid on or before the 61st day after the date on which the fee was due. The yearly interest rate is the rate of interest established for delinquent taxes under Section 111.060, Tax Code.

(c) The executive director may modify a penalty or interest on a fee and penalties authorized by this section if the executive director provides a written explanation showing good cause for the modification.

(d) Penalties and interest collected by the commission under this section or under other law, unless that law otherwise provides, shall be deposited to the credit of the fund or account to which the fee is required to be deposited.

Sec. 5.707. TRANSFERABILITY OF APPROPRIATIONS AND FUNDS DERIVED FROM FEES. Notwithstanding any law that provides specific purposes for which a fund, account, or revenue source may be used and expended by the commission and that restricts the use of revenues and balances by the commission, the commission may transfer a percentage of appropriations from one appropriation item to another appropriation item consistent with the General Appropriations Act for any biennium authorizing the commission to transfer a percentage of appropriations from one appropriation item to another appropriation item. The use of funds in dedicated accounts under this section for purposes in addition to those provided by statutes restricting their use may not exceed seven percent or \$20 million, whichever is less, of appropriations to the commission in the General Appropriations Act for any biennium. A transfer of \$500,000 or more from one appropriation item to another appropriation item under this section must be approved by the commission at an open meeting subject to Chapter 551, Government Code.

Sec. 5.708. PERMIT FEE EXEMPTION FOR CERTAIN RESEARCH PROJECTS. (a) In this section:

(1) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2) "State agency" has the meaning assigned by Section 572.002, Government Code.

(b) If a permit issued by the commission is required for a research project by an institution of higher education or a state agency, payment of a fee is not required for the permit.

SECTION 3.04. Section 26.029I, Water Code, is amended to read as follows:

Sec. 26.029I. WATER QUALITY [WASTE TREATMENT INSPECTION] FEE. (a) An annual water quality [waste treatment inspection] fee is imposed on:

(1) each wastewater [permittee for each waste] discharge permit holder for each wastewater discharge permit held; and

(2) each user of water in proportion to the user's water right, through permit or contract, as reflected in the commission's records, provided that the commission by rule shall ensure that no fee shall be assessed for the portion of a municipal or industrial water right directly associated with a facility or operation for which a fee is assessed under Subdivision (1) of this subsection [by the permittee].

(b) The fee is to supplement any other funds available to pay expenses of the commission related to:

(1) ~~in~~ inspecting waste treatment facilities; and

(2) enforcing the laws of the state and the rules of the commission governing:

(A) waste discharge and waste treatment facilities, including any expenses ~~of the commission~~ necessary ~~to obtain from the federal government delegation of and~~ to administer the national pollutant discharge elimination system (NPDES) program;

(B) *the water resources of this state, including the water quality management programs under Section 26.0135; and*

(C) *any other water resource management programs reasonably related to the activities of the persons required to pay a fee under this section.*

(c) The fee for each year is imposed on each permit or water right in effect during any part of the year. *The commission may establish reduced fees for inactive permits.*

(d) *Irrigation water rights are not subject to a fee under this section.*

(e) ~~[(b)]~~ The commission by rule shall adopt a fee schedule for determining the amount of the fee to be charged. The amount of the fee may not exceed \$75,000 ~~[\$25,000]~~ for each ~~[waste discharge] permit or contract [held by a permittee]~~. *The maximum annual fee under this section for a wastewater discharge or waste treatment facility that holds a water right for the use of water by the facility may not exceed \$75,000. In determining the amount of a fee under this section, the commission may consider:*

(1) *waste discharge permitting factors such as flow volume, toxic pollutant potential, level of traditional pollutant, and heat load;*

(2) ~~[-The commission may consider]~~ the designated uses and segment ranking classification of the water affected by discharges from the permitted facility;

(3) ~~[-Finally, the commission also may consider]~~ the expenses necessary to obtain and administer the NPDES program;

(4) *the reasonable costs of administering the water quality management programs under Section 26.0135; and*

(5) *any other reasonable costs necessary to administer and enforce a water resource management program reasonably related to the activities of the persons required to pay a fee under this section. [The commission shall not adopt any rule designed to increase the fee imposed under this section on a treatment works owned by a local government, as those terms are defined in Section 26.001 of this code, before August 31, 1999.]*

(f) ~~[(e)]~~ The fees collected under this section shall be deposited to the credit of the water resource management account, an account in the general revenue fund.

(g) ~~[(d)]~~ The commission may adopt rules necessary to administer this section.

(h) ~~[(e)]~~ A fee collected under this section is in addition to any other fee that may be charged under this chapter.

SECTION 3.05. Section 26.0135(h), Water Code, is amended to read as follows:

(h) The commission shall apportion, assess, and recover the reasonable costs of administering the water quality management programs under this section ~~[from users of water and wastewater permit holders in the watershed according to the records of the commission generally in proportion to their right, through permit or contract, to use water from and discharge wastewater in the watershed. Irrigation water rights will not be subject to this assessment]~~. The cost to river authorities and others to conduct water quality monitoring and assessment shall be subject to prior review and approval by the commission as to methods of allocation and total amount to be recovered. The commission shall adopt rules to supervise and implement the water quality monitoring, assessment, and associated costs. The rules shall ensure that water users and wastewater dischargers do not pay excessive amounts, ~~[that program funds are equitably apportioned among basins,]~~ that a river authority may recover no more than the actual costs of administering the water quality management programs called for in this section, and that no

municipality shall be assessed *the* cost for any efforts *under this section* that duplicate water quality management activities described in Section 26.177 of this chapter. ~~[The rules concerning the apportionment and assessment of reasonable costs shall provide for a recovery of not more than \$5,000,000 annually. Costs recovered by the commission are to be deposited to the credit of the water resource management account and may be used only to accomplish the purposes of this section. The commission may apply not more than 10 percent of the costs recovered annually toward the commission's overhead costs for the administration of this section and the implementation of regional water quality assessments. The commission, with the assistance and input of each river authority, shall file a written report accounting for the costs recovered under this section with the governor, the lieutenant governor, and the speaker of the house of representatives on or before December 1 of each even-numbered year.]~~

SECTION 3.06. Section 26.0135(j), Water Code, is repealed.

SECTION 3.07. Section 341.041(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule may charge fees to a person who owns, operates, or maintains a public drinking water supply system ~~[to recover the costs of public drinking water supply system programs or services authorized by this subchapter or performed pursuant to the requirements of the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.)]~~. The commission may establish a schedule of fees. The amount of the fees *must be sufficient to cover* ~~[may not exceed]~~ the reasonable costs of administering the programs and services in this subchapter or the federal Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). *Among other factors, the commission shall consider equity among persons required to pay the fees as a factor in determining the amount of the fees. The commission may also use the fees to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.*

SECTION 3.08. Section 366.058(a), Health and Safety Code, is amended to read as follows:

(a) The commission by rule shall establish and collect a reasonable permit fee to cover the cost of issuing permits under this chapter and administering the permitting system. *The commission may also use the fee to cover any other costs incurred to protect water resources in this state, including assessment of water quality, reasonably related to the activities of any of the persons required to pay a fee under the statutes listed in Section 5.701(q), Water Code.*

SECTION 3.09. Section 366.059, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) The commission may assess a *reasonable and appropriate* charge-back fee, *not to exceed \$500*, to a local governmental entity for which the commission issues permits for administrative costs relating to the permitting function that are not covered by the permit fees collected. *The commission shall base the amount of a charge-back fee under this subsection on the actual cost of issuing a permit under this section. The commission may assess a charge-back fee to a local governmental entity under this subsection if the local governmental entity is an authorized agent that:*

(1) has repealed the order, ordinance, or resolution that established the entity as an authorized agent; or

(2) has had its authorization as an authorized agent revoked by the commission.

(d) The commission may not assess a charge-back fee to a local governmental entity if the local governmental entity has repealed the order, ordinance, or resolution that established the entity as an authorized agent or has lost its designation as an authorized agent due to material change in the commission's rules under this chapter.

SECTION 3.10. Section 13.187(a), Water Code, is amended to read as follows:

(a) A utility may not make changes in its rates except by delivering a statement of intent to each ratepayer and with the regulatory authority having original jurisdiction at least 60 ~~[30]~~ days

before the effective date of the proposed change. The effective date of the new rates must be the first day of a billing period, and the new rates may not apply to service received before the effective date of the new rates. The statement of intent must include the information required by the regulatory authority's rules. A copy of the statement of intent shall be mailed or delivered to the appropriate offices of each affected municipality, and to any other affected persons as required by the regulatory authority's rules. When the statement of intent is delivered, the utility shall file with the regulatory authority an application to change rates. The application must include information the regulatory authority requires by rule. If the utility fails to provide within a reasonable time after the application is filed the necessary documentation or other evidence that supports the costs and expenses that are shown in the application, the regulatory authority may disallow the nonsupported expenses. If the application or the statement of intent is not substantially complete or does not comply with the regulatory authority's rules, it may be rejected and the effective date of the rate change may be suspended until a properly completed application is accepted by the regulatory authority and a proper statement of intent is provided. The commission may also suspend the effective date of any rate change if the utility does not have a certificate of public convenience and necessity or a completed application for a certificate or to transfer a certificate pending before the commission or if the utility is delinquent in paying the assessment and any applicable penalties or interest required by Section 5.701(n) [5.235(n)] of this code.

ARTICLE 4. PERFORMANCE-BASED REGULATION

SECTION 4.01. Chapter 5, Water Code, is amended by adding Subchapter Q to read as follows:

SUBCHAPTER Q. PERFORMANCE-BASED REGULATION

Sec. 5.751. APPLICABILITY. This subchapter applies to programs under the jurisdiction of the commission under Chapters 26 and 27 of this code and Chapters 361, 382, and 401, Health and Safety Code. It does not apply to occupational licensing programs under the jurisdiction of the commission.

Sec. 5.752. DEFINITIONS. In this subchapter:

(1) "Applicable legal requirement" means an environmental law, regulation, permit, order, consent, decree, or other requirement.

(2) "Innovative program" means:

(A) a program developed by the commission under this subchapter, Chapter 26 or 27 of this code, or Chapter 361, 382, or 401, Health and Safety Code, that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements under the commission's jurisdiction;

(B) the flexible permit program administered by the commission under Chapter 382, Health and Safety Code; or

(C) the regulatory flexibility program administered by the commission under Section 5.758.

(3) "Permit" includes a license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the commission under this code or the Health and Safety Code.

(4) "Region" means a region of the commission's field operations division or that division's successor.

(5) "Strategically directed regulatory structure" means a program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

Sec. 5.753. STANDARD FOR EVALUATING COMPLIANCE HISTORY. (a) Consistent with other law and the requirements necessary to maintain federal program authorization, the commission by rule shall develop a uniform standard for evaluating compliance history.

(b) The components of compliance history must include:

(1) enforcement orders, court judgments, consent decrees, and criminal convictions of this state and the federal government relating to compliance with applicable legal requirements under the jurisdiction of the commission or the United States Environmental Protection Agency;

(2) notwithstanding any other provision of this code, orders issued under Section 7.070;

(3) to the extent readily available to the commission, enforcement orders, court judgments, and criminal convictions relating to violations of environmental laws of other states; and

(4) changes in ownership.

(c) The set of components must also include any information required by other law or any requirement necessary to maintain federal program authorization.

(d) The set of components shall include notices of violations. A notice of violation administratively determined to be without merit shall not be included in a compliance history. A notice of violation that is included in a compliance history shall be removed from the compliance history if the commission subsequently determines the notice of violation to be without merit.

(e) Except as required by other law or any requirement necessary to maintain federal program authorization, the commission by rule shall establish a period for compliance history.

Sec. 5.754. CLASSIFICATION AND USE OF COMPLIANCE HISTORY. (a) The commission by rule shall establish a set of standards for the classification of a person's compliance history.

(b) Rules adopted under this section must, at a minimum, provide for three classifications of compliance history in a manner adequate to distinguish among:

(1) poor performers, or regulated entities that in the commission's judgment perform below average;

(2) average performers, or regulated entities that generally comply with environmental regulations; and

(3) high performers, or regulated entities that have an above-average compliance record.

(c) In classifying a person's compliance history, the commission shall:

(1) determine whether a violation of an applicable legal requirement is of major, moderate, or minor significance;

(2) establish criteria for classifying a repeat violator, giving consideration to the number and complexity of facilities owned or operated by the person; and

(3) consider the significance of the violation and whether the person is a repeat violator.

(d) The commission by rule shall establish methods of assessing the compliance history of regulated entities for which it does not have adequate compliance information. The methods may include requiring a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

(e) The commission by rule shall provide for the use of compliance history classifications in commission decisions regarding:

(1) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(2) enforcement;

(3) the use of announced inspections; and

(4) participation in innovative programs.

(f) The assessment methods shall specify the circumstances in which the commission may revoke the permit of a repeat violator and shall establish enhanced administrative penalties for repeat violators.

(g) Rules adopted under Subsection (e) for the use of compliance history shall provide for additional oversight of, and review of applications regarding, facilities owned or operated by a person whose compliance performance is in the lowest classification developed under this section.

(h) The commission by rule shall, at a minimum, prohibit a person whose compliance history is classified in the lowest classification developed under this section from:

(1) receiving an announced inspection; and

(2) obtaining or renewing a flexible permit under the program administered by the commission under Chapter 382, Health and Safety Code, or participating in the regulatory flexibility program administered by the commission under Section 5.758.

(i) The commission shall consider the compliance history of a regulated entity when determining whether to grant the regulated entity's application for a permit or permit amendment for any activity under the commission's jurisdiction to which this subchapter applies. Notwithstanding any provision of this code or the Health and Safety Code relating to the granting of permits or permit amendments by the commission, the commission, after an opportunity for a hearing, shall deny a regulated entity's application for a permit or permit amendment if the regulated entity's compliance history is unacceptable based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations.

Sec. 5.755. STRATEGICALLY DIRECTED REGULATORY STRUCTURE. (a) The commission by rule shall develop a strategically directed regulatory structure to provide incentives for enhanced environmental performance.

(b) The strategically directed regulatory structure shall offer incentives based on:

(1) a person's compliance history classification; and

(2) any voluntary measures undertaken by the person to improve environmental quality.

(c) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization.

Sec. 5.756. COLLECTION AND ANALYSIS OF COMPLIANCE PERFORMANCE INFORMATION. (a) The commission shall collect data on:

(1) the results of inspections conducted by the commission; and

(2) whether inspections are announced or unannounced.

(b) The commission shall collect data on and make available to the public on the Internet:

(1) the number and percentage of all violations committed by persons who previously have committed the same or similar violations;

(2) the number and percentage of enforcement orders issued by the commission that are issued to entities that have been the subject of a previous enforcement order;

(3) whether a violation is of major, moderate, or minor significance, as defined by commission rule;

(4) whether a violation relates to an applicable legal requirement pertaining to air, water, or waste; and

(5) the region in which the facility is located.

(c) The commission annually shall prepare a comparative analysis of data evaluating the performance, over time, of the commission and of entities regulated by the commission.

(d) The commission shall include in the annual enforcement report required by Section 5.123, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997, the

comparative performance analysis required by Subsection (c), organized by region and regulated medium.

Sec. 5.757. COORDINATION OF INNOVATIVE PROGRAMS. (a) The commission shall designate a single point of contact within the agency to coordinate all innovative programs.

(b) The coordinator shall:

- (1) inventory, coordinate, and market and evaluate all innovative programs;*
- (2) provide information and technical assistance to persons participating in or interested in participating in those programs; and*
- (3) work with the pollution prevention advisory committee to assist the commission in integrating the innovative programs into the commission's operations, including:*
 - (A) program administration;*
 - (B) strategic planning; and*
 - (C) staff training.*

SECTION 4.02. Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, is transferred to new Subchapter Q, Chapter 5, Water Code, redesignated as Section 5.758, and amended to read as follows:

Sec. 5.758 ~~[5.123]~~. REGULATORY FLEXIBILITY. (a) The commission by order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard that is:

(1) *more* ~~[at least as]~~ protective of the environment and the public health *than* ~~[as]~~ the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(2) not inconsistent with federal law.

(b) *The commission may not exempt an applicant under this section unless the applicant can present to the commission documented evidence of benefits to environmental quality that will result from the project the applicant proposes.*

(c) The commission by rule shall specify the procedure for obtaining an exemption under this section. The rules must provide for public notice and for public participation in a proceeding involving an application for an exemption under this section.

(d) ~~[(e)]~~ The commission's order must provide a specific description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

(e) ~~[(d)]~~ The commission by rule may establish a reasonable fee for applying for an exemption under this section.

(f) ~~[(e)]~~ A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order grants an exemption.

~~[(f) A permit may satisfy a requirement to demonstrate need by showing need on a regional basis considering economic impacts.]~~

(g) This section does not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

(h) In implementing the program of regulatory flexibility authorized by this section, the commission shall:

- (1) market the program to businesses in the state through all available appropriate media;
- (2) endorse alternative methods that will *clearly* benefit the environment and impose the least onerous restrictions on business;
- (3) fix and enforce environmental standards, allowing businesses flexibility in meeting the standards in a manner that *clearly* enhances environmental outcomes; and

(4) work to achieve consistent and predictable results for the regulated community and shorter waits for permit issuance.

SECTION 4.03. Section 7.067(a), Water Code, is amended to read as follows:

(a) The commission may compromise, modify, or remit, with or without conditions, an administrative penalty imposed under this subchapter. In determining the appropriate amount of a penalty for settlement of an administrative enforcement matter, the commission may consider a respondent's willingness to contribute to supplemental environmental projects that are approved by the commission, giving preference to projects that benefit the community in which the alleged violation occurred. The commission may approve a supplemental environmental project with activities in territory of the United Mexican States if the project substantially benefits territory in this state in a manner described by Subsection (b). The commission may not approve a project that is necessary to bring a respondent into compliance with environmental laws, ~~or~~ that is necessary to remediate environmental harm caused by the respondent's alleged violation, *or that the respondent has already agreed to perform under a preexisting agreement with a governmental agency.*

SECTION 4.04. Section 361.0215, Health and Safety Code, is amended to read as follows:

Sec. 361.0215. *POLLUTION PREVENTION* ~~[WASTE REDUCTION]~~ ADVISORY COMMITTEE. (a) The *pollution prevention* ~~[waste reduction]~~ advisory committee is composed of nine members with a balanced representation of environmental and public interest groups and the regulated community.

(b) The committee shall advise the commission and interagency coordination council on:

(1) the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization;

(2) the development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households;

(3) the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; and

(4) other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Section 361.023(a).

(c) *The committee shall advise the commission on the creation and implementation of the strategically directed regulatory structure developed under Section 5.755, Water Code.*

(d) *The committee shall report quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important.*

SECTION 4.05. Section 361.088, Health and Safety Code, is amended by adding Subsection (g) to read as follows:

(g) *The commission shall review a permit issued under this chapter every five years to assess the permit holder's compliance history.*

ARTICLE 5. REGULATION OF AIR POLLUTION

SECTION 5.01. (a) Subchapter B, Chapter 382, Health and Safety Code, is amended by adding Sections 382.0215 and 382.0216 to read as follows:

Sec. 382.0215. *ASSESSMENT OF EMISSIONS DUE TO EMISSIONS EVENTS.* (a) *In this section, "emissions event" means an upset, or unscheduled maintenance, startup, or shutdown activity, that results in the unauthorized emissions of air contaminants from an emissions point. Maintenance, startup, and shutdown activities shall not be considered unscheduled only if the activity will not and does not result in the emission of at least a reportable quantity of unauthorized emissions of air contaminants and the activity is recorded as may be required by*

commission rule, or if the activity will result in the emission of at least a reportable quantity of unauthorized emissions and:

- (1) the owner or operator of the facility provides any prior notice or final report that the commission, by rule, may establish;
 - (2) the notice or final report includes the information required in Subsection (b)(3); and
 - (3) the actual emissions do not exceed the estimates submitted in the notice.
- (b) The commission shall require the owner or operator of a facility that experiences emissions events:
- (1) to maintain a record of all emissions events at the facility in the manner and for the periods prescribed by commission rule;
 - (2) to notify the commission, as soon as practicable but not later than 24 hours after discovery of the emissions event, of an emissions event resulting in the emission of a reportable quantity of air contaminants as determined by commission rule; and
 - (3) to report to the commission, not later than two weeks after the occurrence of an emissions event that results in the emission of a reportable quantity of air contaminants as determined by commission rule, all information necessary to evaluate the emissions event, including:
 - (A) the name of the owner or operator of the reporting facility;
 - (B) the location of the reporting facility;
 - (C) the date and time the emissions began;
 - (D) the duration of the emissions;
 - (E) the nature and measured or estimated quantity of air contaminants emitted, including the method of calculation of, or other basis for determining, the quantity of air contaminants emitted;
 - (F) the processes and equipment involved in the emissions event;
 - (G) the cause of the emissions; and
 - (H) any additional information necessary to evaluate the emissions event.
- (c) The owner or operator of a boiler or combustion turbine fueled by natural gas, coal, lignite, wood, or fuel oil containing hazardous air pollutants at concentrations of less than 0.02 percent by weight that is equipped with a continuous emission monitoring system that completes a minimum of one cycle per operation (sampling, analyzing, and data recording) for each successive 15-minute interval who is required to submit excess emission reports by other state or federal regulations, shall, by commission rule, be allowed to submit information from that monitoring system to meet the requirements under Subsection (b)(3) so long as the notice submitted under Subsection (b)(2) contains the information required under Subsection (b)(3). Such excess emission reports shall satisfy the recordkeeping requirements of Subsection (b)(1) so long as the information in such reports meets commission requirements. This subsection does not require the commission to revise the reportable quantity for boilers and combustion turbines.
- (d) The commission shall centrally track emissions events and collect information relating to:
- (1) inspections or enforcement actions taken by the commission in response to emissions events; and
 - (2) the number of emissions events occurring in each commission region and the quantity of emissions from each emissions event.
- (e) The commission shall develop the capacity for electronic reporting and shall incorporate reported emissions events into a permanent centralized database for emissions events. The commission shall develop a mechanism whereby the reporting entity shall be allowed to review the information relative to its reported emissions events prior to such information being included in the database. The database shall be accessible to the public. The commission shall

evaluate information in the database to identify persons who repeatedly fail to report reportable emissions events. The commission shall enforce against such persons pursuant to Section 382.0216(i). The commission shall describe such enforcement actions in the report required in Subsection (g).

(f) An owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report and which has experienced no emissions events during the relevant year must include as part of the inventory a statement that the facility experienced no emissions events during the prior year. An owner or operator of a facility required by Section 382.014 to submit an annual emissions inventory report must include the total annual emissions from all emissions events in categories as established by commission rule.

(g) The commission annually shall assess the information received under this section, including actions taken by the commission in response to the emissions events, and shall include the assessment in the report required by Section 5.123, Water Code, as added by Chapters 304 and 1082, Acts of the 75th Legislature, Regular Session, 1997.

Sec. 382.0216. REGULATION OF EMISSIONS EVENTS. (a) In this section, "emissions event" has the meaning assigned by Section 382.0215.

(b) The commission shall establish criteria for determining when emissions events are excessive. The criteria must include consideration of:

- (1) the frequency of the facility's emissions events;*
- (2) the cause of the emissions event;*
- (3) the quantity and impact on human health or the environment of the emissions event;*
- (4) the duration of the emissions event;*
- (5) the percentage of a facility's total annual operating hours during which emissions events occur; and*
- (6) the need for startup, shutdown, and maintenance activities.*

(c) The commission shall require a facility to take action to reduce emissions from excessive emissions events. Consistent with commission rules, a facility required to take action under this subsection must either file a corrective action plan or file a letter of intent to obtain authorization for emissions from the excessive emissions events, provided that the emissions are sufficiently frequent, quantifiable, and predictable. If the intended authorization is a permit, a permit application shall be filed within 120 days of the filing of the letter of intent. If the intended authorization is a permit by rule or standard exemption, the authorization must be obtained within 120 days of the filing of the letter of intent. If the commission denies the requested authorization, within 45 days of receiving notice of the commission's denial, the facility shall file a corrective action plan to reduce emissions from the excessive emissions events.

(d) A corrective action plan filed under Subsection (c) must identify the cause or causes of each emissions event, specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future, and specify a time within which the corrective action plan will be implemented. A corrective action plan must be approved by the commission. A corrective action plan shall be deemed approved 45 days after filing, if the commission has not disapproved the plan; however, an owner or operator may request affirmative commission approval, in which case the commission must take final written action to approve or disapprove the plan within 120 days. An approved corrective action plan shall be made available to the public by the commission, except to the extent information in the plan is confidential information protected under Chapter 552, Government Code. The commission shall establish reasonable schedules for the implementation of corrective action plans and procedures for revision of a corrective action plan if the commission finds the plan, after implementation begins, to be inadequate to meet the goal of preventing or minimizing emissions and emissions events. The implementation schedule shall be enforceable by the commission.

(e) The rules may not exclude from the requirement to submit a corrective action plan emissions events resulting from the lack of preventive maintenance or from operator error, or emissions that are a part of a recurring pattern of emissions events indicative of inadequate design or operation.

(f) The commission by rule may establish an affirmative defense to a commission enforcement action if the emissions event meets criteria defined by commission rule. In establishing rules under this subsection, the commission at a minimum must require consideration of the factors listed in Subsections (b)(1)-(6).

(g) The burden of proof in any claim of a defense to commission enforcement action for an emissions event is on the person claiming the defense.

(h) A person may not claim an affirmative defense to a commission enforcement action if the person failed to take corrective action under a corrective action plan approved by the commission within the time prescribed by the commission and an emissions event recurs because of that failure.

(i) In the event the owner or operator of a facility fails to report an emissions event, the commission shall initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply where an owner or operator reports an emissions event and the report was incomplete, inaccurate, or untimely unless the owner or operator knowingly or intentionally falsified the information in the report.

(j) The commission shall account for and consider chronic excessive emissions events and emissions events for which the commission has initiated enforcement in the manner set forth by the commission in its review of an entity's compliance history.

(b) The Texas Natural Resource Conservation Commission shall implement all technical and equipment changes necessary for compliance with Sections 382.0215(d) and (e), Health and Safety Code, as added by this Act, not later than January 1, 2003. After implementation of the necessary technical and equipment changes, the Texas Natural Resource Conservation Commission by rule shall require reporting of reportable emissions events to the centralized database, and may exempt businesses considered so small that electronic reporting is impracticable.

SECTION 5.02. Sections 382.051(a) and (b), Health and Safety Code, are amended to read as follows:

(a) The commission may issue a permit:

(1) to construct a new facility or modify an existing facility that may emit air contaminants;

(2) to operate an existing facility *affected by Section 382.0518(g)* [~~under a voluntary emissions reduction permit~~]; or

(3) to operate a federal source.

(b) To assist in fulfilling its authorization provided by Subsection (a), the commission may issue:

(1) special permits for certain facilities;

(2) a general permit for numerous similar sources subject to Section 382.054;

(3) a standard permit for similar facilities;

(4) a permit by rule for types of facilities that will not significantly contribute air contaminants to the atmosphere;

(5) a single federal operating permit or preconstruction permit for multiple federal sources or facilities located at the same site;

(6) a multiple plant permit for existing facilities at multiple locations subject to Section 382.0518 or 382.0519; ~~[or]~~

(7) *an existing facility permit or existing facility flexible permit under Section 382.05183;*

- (8) a small business stationary source permit under Section 382.05184;
- (9) an electric generating facility permit under Section 382.05185 of this code and Section 39.264, Utilities Code;
- (10) a pipeline facilities permit under Section 382.05186; or
- (11) other permits as necessary.

SECTION 5.03. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Sections 382.05181-382.05186 to read as follows:

Sec. 382.05181. PERMIT REQUIRED. (a) Any facility affected by Section 382.0518(g) that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after:

- (1) September 1, 2003, if the facility is located in the East Texas region; or
- (2) September 1, 2004, if the facility is located in the West Texas region.

(b) Any facility affected by Section 382.0518(g) that has obtained a permit under this chapter, other than a permit under Section 382.054, and has not fully complied with the conditions of the permit pertaining to the installation of emissions controls or reductions in emissions of air contaminants, may not emit air contaminants on or after:

- (1) March 1, 2007, if the facility is located in the East Texas region; or
- (2) March 1, 2008, if the facility is located in the West Texas region.

(c) The East Texas region:

- (1) contains all counties traversed by or east of Interstate Highway 35 north of San Antonio or traversed by or east of Interstate Highway 37 south of San Antonio; and
- (2) includes Bexar, Bosque, Coryell, Hood, Parker, Somervell, and Wise counties.

(d) The West Texas region includes all counties not contained in the East Texas region.

(e) The commission promptly shall review each application for a permit under this chapter for a facility affected by Section 382.0518(g). If the commission finds that necessary information is omitted from the application, that the application contains incorrect information, or that more information is necessary to complete the processing of the application, the commission shall issue a notice of deficiency and order the information to be provided not later than the 60th day after the date the notice is issued. If the information is not provided to the commission on or before that date, the commission shall dismiss the application.

(f) The commission shall take final action on an application for a permit under this chapter for a facility affected by Section 382.0518(g) before the first anniversary of the date on which the commission receives an administratively complete application.

(g) An owner or operator of a facility affected by Section 382.0518(g) that does not obtain a permit within the 12-month period may petition the commission for an extension of the time period for compliance specified by Subsection (b). The commission may grant not more than one extension for a facility, for an additional period not to exceed 12 months, if the commission finds good cause for the extension.

(h) A permit application under this chapter for a facility affected by Section 382.0518(g) is subject to the notice and hearing requirements as provided by Section 382.05191.

(i) This section does not apply to a facility eligible for a permit under Section 382.05184.

Sec. 382.05182. NOTICE OF SHUTDOWN. (a) Any notice submitted in compliance with this section must be filed with the commission by the dates in Section 382.05181(a).

(b) A notice under this section shall include:

- (1) the date the facility intends to cease operating;
- (2) an inventory of the type and amount of emissions that will be eliminated when the facility ceases to operate; and

(3) any other necessary and relevant information the commission by rule deems appropriate.

Sec. 382.05183. *EXISTING FACILITY PERMIT.* (a) The owner or operator of a facility affected by Section 382.0518(g) may apply for a permit to operate the facility under this section.

(b) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that the facility will use a control method at least as beneficial as that described by Section 382.003(9)(E)(ii), considering the age and the remaining useful life of the facility.

(c) The commission may issue an existing facility flexible permit for some or all of the facilities at a site affected by Section 382.0518(g) and facilities permitted under Section 382.0519 in order to implement the requirements of this section. Permits issued under this subsection shall follow the same permit issuance, modification, and renewal procedures as existing facility permits.

(d) If the commission finds that the emissions from the facility will contravene the standards under Subsection (b) or the intent of this chapter, including protection of the public's health and physical property, the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05184. *SMALL BUSINESS STATIONARY SOURCE PERMIT.* (a) Facilities affected by Section 382.0518(g) that are located at a small business stationary source, as defined by Section 382.0365(h), and are not required by commission rule to report to the commission under Section 382.014 may apply for a permit under this section before September 1, 2004.

(b) Facilities affected by Section 382.0518(g) that are located at a small business stationary source that does not have an application pending for a permit under this chapter, other than a permit required under Section 382.054, and that has not submitted a notice of shutdown under Section 382.05182, may not emit air contaminants on or after March 1, 2008.

(c) The commission shall grant a permit under this section if, from the information available to the commission, the commission finds that there is no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(d) If the commission finds that the emissions from the facility will not comply with Subsection (c), the commission may not grant the permit under this section.

(e) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(f) A permit application under this section is not subject to notice and hearing requirements and is not subject to Chapter 2001, Government Code.

(g) The commission may adopt rules as necessary to implement and administer this section.

Sec. 382.05185. *ELECTRIC GENERATING FACILITY PERMIT.* (a) An electric generating facility is considered permitted under this section with respect to all air contaminants if the facility is:

(1) a natural-gas-fired electric generating facility that has applied for or obtained a permit under Section 39.264, Utilities Code; or

(2) an electric generating facility exempted from permitting under Section 39.264(d), Utilities Code.

(b) A coal-fired electric generating facility that is required to obtain a permit under Section 39.264, Utilities Code:

(1) shall be considered permitted under this section with respect to nitrogen oxides, sulphur dioxide, and, as provided by commission rules, for opacity if the facility has applied for or obtained a permit under Section 39.264, Utilities Code; and

(2) is not considered permitted for criteria pollutants not described by Subsection (b)(1).

(c) The commission shall issue a permit for a facility subject to Subsection (b) for criteria pollutants not covered by Subsection (b)(1) if the commission finds that the emissions from the facility will not contravene the intent of this chapter, including protection of the public's health and physical property. Upon request by the applicant, the commission shall include a permit application under this subsection with the applicant's pending permit application under Section 39.264, Utilities Code.

(d) The owner or operator of an electric generating facility with a permit or an application pending under Section 39.264, Utilities Code, may apply for a permit under this section before September 1, 2002, for a facility located at the same site if the facility not permitted or without a pending application under Section 39.264, Utilities Code, is:

(1) a generator that does not generate electric energy for compensation and is used not more than 10 percent of the normal annual operating schedule; or

(2) an auxiliary fossil-fuel-fired combustion facility that does not generate electric energy and does not emit more than 100 tons of any air contaminant annually.

(e) Emissions from facilities permitted under Subsection (d) shall be included in the emission allowance trading program established under Section 39.264, Utilities Code. The commission may not issue new allowances based on a permit issued under this section.

(f) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(g) The commission may adopt rules as necessary to implement and administer this section.

(h) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(i) For the purposes of this section, a natural-gas-fired electric generating facility includes a facility that was designed to burn either natural gas or fuel oil of a grade approved by commission rule. The commission shall adopt rules regarding acceptable fuel oil grades.

Sec. 382.05186. PIPELINE FACILITIES PERMITS. (a) This section applies only to reciprocating internal combustion engines that are part of processing, treating, compression, or pumping facilities affected by Section 382.0518(g) connected to or part of a gathering or transmission pipeline. Pipeline facilities affected by Section 382.0518(g) other than reciprocating internal combustion engines may apply for an existing facility permit or other applicable permit under this chapter other than a pipeline facilities permit.

(b) The commission by rule shall:

(1) provide for the issuance of a single permit for all reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline;

(2) provide for a means for mandatory emissions reductions for facilities permitted under this section to be achieved:

(A) at one source; or

(B) by averaging reductions among more than one reciprocating internal combustion facility connected to or part of a gathering or transmission pipeline; and

(3) allow an owner or operator to apply for separate permits under this section for discrete and separate reciprocating internal combustion facilities connected to or part of a gathering or transmission pipeline.

(c) If the mandatory emissions reductions under this section are to be achieved by averaging reductions among more than one source connected to or part of a gathering or transmission pipeline, the average may not include emissions reductions achieved in order to comply with other state or federal law.

(d) If the mandatory emissions reductions under this section are to be achieved at one source, the reduction may include emissions reductions achieved since January 1, 2001, in order to comply with other state or federal law.

(e) The commission shall grant a permit under this section for a facility or facilities located in the East Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require a 50 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require a 50 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(f) The commission shall grant a permit under this section for facilities located in the West Texas region if, from information available to the commission, the commission finds that the conditions of the permit will require up to a 20 percent reduction of the hourly emissions rate of nitrogen oxides, expressed in terms of grams per brake horsepower-hour. The commission may also require up to a 20 percent reduction of the hourly emissions rate of volatile organic compounds, expressed in terms of grams per brake horsepower-hour.

(g) A permit application under this section is subject to notice and hearing requirements as provided by Section 382.05191.

(h) A person planning the modification of a facility previously permitted under this section must comply with Section 382.0518 before modifying.

(i) The commission may adopt rules as necessary to implement and administer this section.

SECTION 5.04. Section 382.05191, Health and Safety Code, is amended to read as follows:

Sec. 382.05191. ~~[VOLUNTARY]~~ EMISSIONS REDUCTION PERMITS ~~[PERMIT]~~: NOTICE AND HEARING. (a) An applicant for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 shall publish notice of intent to obtain the permit in accordance with Section 382.056.

(b) The commission may authorize an applicant for a permit for a facility that constitutes or is part of a small business stationary source as defined in Section 382.0365(h) ~~[382.0365(g)(2)]~~ to provide notice using an alternative means if the commission finds that the proposed method will result in equal or better communication with the public, considering the effectiveness of the notice in reaching potentially affected persons, cost, and consistency with federal requirements.

(c) The commission shall provide an opportunity for a public hearing and the submission of public comment and send notice of a decision on an application for a permit under Section 382.05183, 382.05185(c) or (d), 382.05186, or 382.0519 in the same manner as provided by Sections 382.0561 and 382.0562.

(d) A person affected by a decision of the commission to issue or deny a ~~[voluntary emissions reduction]~~ permit under Section 382.05183, 382.05185(c) or (d), or 382.05186 may move for rehearing and is entitled to judicial review under Section 382.032.

SECTION 5.05. Section 382.05192, Health and Safety Code, is amended to read as follows:

Sec. 382.05192. REVIEW AND RENEWAL OF ~~[VOLUNTARY]~~ EMISSIONS REDUCTION AND MULTIPLE PLANT PERMITS. Review and renewal of a permit issued under Section 382.05183, 382.05185(c) or (d), 382.05186, 382.0519, or 382.05194 shall be conducted in accordance with Section 382.055.

SECTION 5.06. Section 361.082, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

SECTION 5.07. Subchapter C, Chapter 382, Health and Safety Code, is amended by adding Section 382.065 to read as follows:

Sec. 382.065. CERTAIN LOCATIONS FOR CONCRETE CRUSHING FACILITY PROHIBITED. (a) The commission by rule shall prohibit the location of or operation of a

concrete crushing facility within 440 yards of a building used as a single or multifamily residence, school, or place of worship.

(b) This section does not apply to an existing concrete crushing facility.

SECTION 5.08. (a) Subchapter L, Chapter 5, Water Code, is amended by adding Section 5.5145 to read as follows:

Sec. 5.5145. EMERGENCY ORDER CONCERNING OPERATION OF ROCK CRUSHER OR CONCRETE PLANT WITHOUT PERMIT. The commission shall issue an emergency order under this subchapter suspending operations of a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing and is required to obtain a permit under Section 382.0518, Health and Safety Code, and is operating without the necessary permit.

(b) Section 7.052, Water Code, is amended by adding a new Subsection (b), relettering existing Subsection (b) as Subsection (c), and amending and relettering existing Subsection (c) as Subsection (d) to read as follows:

(b) The amount of the penalty for operating a rock crusher or a concrete plant that performs wet batching, dry batching, or central mixing, that is required to obtain a permit under Section 382.0518, Health and Safety Code, and that is operating without the required permit is \$10,000. Each day that a continuing violation occurs is a separate violation.

(c) The amount of the penalty for all other violations within the jurisdiction of the commission to enforce may not exceed \$10,000 a day for each violation.

(d) *Except as provided by Subsection (b), each* ~~[(c)-Each]~~ day that a continuing violation occurs may be considered a separate violation. The commission may authorize an installment payment schedule for an administrative penalty assessed under this subchapter, except for an administrative penalty assessed under Section 7.057 or assessed after a hearing under Section 7.058.

(c) The changes in law made by Section 5.5145, Water Code, as added by this Act, and Section 7.052, Water Code, as amended by this Act, apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before that date is governed by the law in effect at the time the violation occurred, and the former law is continued in effect for that purpose.

ARTICLE 6. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

SECTION 6.01. Chapter 421, Health and Safety Code, as added by Chapter 447, Acts of the 76th Legislature, Regular Session, 1999, is transferred to Chapter 5, Water Code, redesignated as Subchapter R, and amended to read as follows:

SUBCHAPTER R ~~[CHAPTER 421]~~. ACCREDITATION OF ENVIRONMENTAL TESTING LABORATORIES

Sec. 5.801 ~~[421.001]~~. *DEFINITION* ~~[DEFINITIONS]~~. In this subchapter, "environmental" ~~chapter:~~

~~[(1) "Board" means the Texas Board of Health.~~

~~[(2) "Department" means the Texas Department of Health.~~

~~[(3) "Environmental" testing laboratory" means a scientific laboratory that:]~~

~~[(A)] performs analyses to determine the chemical, molecular, or pathogenic components of environmental media [drinking water, wastewater, hazardous wastes, soil, or air] for regulatory compliance purposes[; and~~

~~[(B) is either a commercial laboratory or an environmental laboratory that is required to be accredited under federal law].~~

Sec. 5.802 [421.002]. ADMINISTRATION BY COMMISSION [DEPARTMENT]. The *commission* [department] shall adopt rules for the administration of [administer] the voluntary environmental testing laboratory accreditation program established by this chapter. *The program must be consistent with national accreditation standards approved by the National Environmental Laboratory Accreditation Program.*

Sec. 5.803 [421.003]. APPLICATION; FEE. (a) To be accredited under *the accreditation program adopted under this subchapter* [chapter], an environmental testing laboratory must submit an application to the *commission* [department] on a form prescribed by the *commission* [department], accompanied by the accreditation fee. The application must contain the information that the *commission* [department] requires.

(b) The *commission by rule* [board] shall establish a schedule of reasonable [an] accreditation fees designed to recover the costs of the accreditation program, including the costs associated with:

- (1) application review;
- (2) initial, routine, and follow-up inspections by the commission; and
- (3) preparation of reports [fee in an amount sufficient to defray the cost of administering this chapter].

Sec. 5.804 [421.004]. ISSUANCE OF ACCREDITATION; RECIPROCITY. (a) The *commission* [department] may accredit an environmental testing laboratory that complies with the *commission* requirements established under this subchapter [chapter].

(b) The *commission* [board] by rule may provide for the accreditation of an environmental testing laboratory that is accredited or licensed in [by] another state *by an authority that is approved by the National Environmental Laboratory Accreditation Program.*

Sec. 5.805 [421.005]. RULES; MINIMUM STANDARDS. The *commission* [board] shall adopt rules to implement this subchapter [chapter] and minimum performance and quality assurance standards for accreditation of an environmental testing laboratory.

Sec. 5.806 [421.006]. DISCIPLINE. After notice and an opportunity for hearing, the *commission* [department] may suspend or revoke the accreditation of an environmental testing laboratory that does not comply with the minimum performance and quality assurance standards established under this subchapter [chapter].

Sec. 5.807. ENVIRONMENTAL TESTING LABORATORY ACCREDITATION ACCOUNT. *All fees collected under this subchapter shall be deposited to the credit of the environmental testing laboratory accreditation account and may be appropriated to the commission only for paying the costs of the accreditation program.*

ARTICLE 7. CERTIFICATION OF WATER TREATMENT SPECIALISTS

SECTION 7.01. Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes), is transferred to Chapter 341, Health and Safety Code, redesignated as Subchapter G, Chapter 341, and amended to read as follows:

SUBCHAPTER G. CERTIFICATION OF WATER TREATMENT SPECIALISTS

~~Sec. 341.101 [Sec. 3A. CERTIFICATION RELATING TO RESIDENTIAL WATER TREATMENT FACILITIES]. DEFINITIONS. In this subchapter:~~

- ~~(1) "Commission" means the Texas Natural Resource Conservation Commission.~~
- ~~(2) "Installation of water treatment appliances" includes connecting the appliances to all necessary utility connections in residential, commercial, or industrial facilities.~~
- ~~(3) "Water treatment" means a business conducted under contract that requires experience in the analysis of water, including the ability to determine how to treat influent and effluent water, to alter or purify water, and to add or remove a mineral, chemical, or~~

bacterial content or substance. The term also includes the installation and service of potable water treatment equipment in public or private water systems and making connections necessary to complete installation of a water treatment system.

(4) "Water treatment equipment" includes appliances used to alter or purify water or to alter a mineral, chemical, or bacterial content or substance.

Sec. 341.102. WATER TREATMENT SPECIALIST CERTIFICATION PROGRAM. (a) The commission by rule ~~[Commissioner of Health or his designee]~~ shall establish a program to certify persons ~~[as being]~~ qualified to install, exchange, service ~~[for the installation, exchange, servicing]~~, and repair ~~[of]~~ residential, commercial, or industrial water treatment equipment and appliances ~~[facilities as defined by Subsection (g) of Section 2 of this Act]~~.

(b) The rules must establish:

(1) ~~[Texas Board of Health shall set]~~ standards for certification to ensure the public health and to protect the public from unqualified persons engaging in activities relating to water treatment;

(2) classes of certification;

(3) duration of certification; and

(4) reasonable annual certification fees in an amount sufficient to pay the administrative costs of the certification program, but not to exceed \$150 a year for any class of certification.

Sec. 341.103. CERTIFICATION REQUIRED. A person may not engage in water treatment unless the person first obtains a certificate from the commission under the program established under this subchapter.

Sec. 341.104. APPLICATION FOR CERTIFICATION. A person desiring to obtain certification under the program established under this subchapter shall file with the commission:

(1) an application in the form prescribed by the commission and containing the information required by the commission; and

(2) the appropriate certification fee.

Sec. 341.105. ISSUANCE OF CERTIFICATE. (a) ~~[Nothing in this section shall be construed to require that persons licensed pursuant to this Act are subject to certification under this section.]~~

~~[(b) Before a certificate is issued or renewed under this section, an applicant or holder of a certificate shall be required to pay a fee of \$10 a year.]~~ On receipt of an application that meets commission requirements and the required fee, the commission ~~[Texas Department of Health]~~ shall issue to a ~~[qualified]~~ person who meets commission standards for certification a certificate stating that the person is qualified to install, exchange, service ~~[for the installation, exchange, servicing]~~, and repair ~~[of]~~ residential, commercial, or industrial water treatment facilities.

~~(b) [The Texas Board of Health shall adopt rules establishing classes of certificates, duration of certificates, and fees.]~~

~~[(c)]~~ All fees received by the commission ~~[Texas Department of Health]~~ under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

~~(c)~~ A person who holds a license under The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is exempt from the requirements of this subchapter.

~~(d)~~ This subchapter does not apply to an employee of an industrial facility installing or servicing water treatment equipment.

ARTICLE 8. REGISTRATION OF IRRIGATORS AND ON-SITE SEWAGE DISPOSAL SYSTEM INSTALLERS

SECTION 8.01. Section 34.008(a), Water Code, is amended to read as follows:

(a) The commission may waive any prerequisite ~~[certify]~~ for obtaining registration for ~~[without examination]~~ an applicant who is registered as a licensed irrigator or licensed installer by ~~[in]~~ another jurisdiction with which this state has a reciprocity agreement. The commission may make an agreement, subject to the approval of the governor, with another state to allow for registration by reciprocity ~~[state or country that has requirements for registration that are at least substantially equivalent to the requirements of this state and that extends the same privilege of reciprocity to licensed irrigators or licensed installers registered in this state].~~

SECTION 8.02. Section 34.009(f), Water Code, is amended to read as follows:

(f) The commission by rule may adopt a system under which certificates of registration expire on various dates during the year. For the year in which the expiration date is changed, ~~the commission shall prorate registration [renewal] fees [payable on August 31 shall be prorated]~~ on a monthly basis so that each registrant ~~pays [will pay]~~ only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total ~~registration~~ renewal fee is due.

SECTION 8.03. Section 366.076, Health and Safety Code, is amended to read as follows:

Sec. 366.076. REGISTRATION RENEWAL. The commission ~~by rule may adopt a system under which registrations expire on various dates during the year. For each year in which the registration expiration date is changed, the commission shall prorate registration fees on a monthly basis so that each registrant pays only that portion of the registration fee that is allocable to the number of months during which the registration is valid. On renewal of the registration on the new expiration date, the total registration renewal fee is payable [provide for periodic renewal of registrations].~~

ARTICLE 9. REGULATION OF SOLID WASTE

SECTION 9.01. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1125 to read as follows:

Sec. 361.1125. IMMEDIATE REMEDIATION OR REMOVAL OF HAZARDOUS SUBSTANCE AT SCRAP TIRE SITE. (a) In this section:

(1) "Scrap tire" has the meaning assigned by Section 361.112.

(2) "Scrap tire site" includes any site at which more than 500 scrap tires are located.

(b) If the executive director after investigation finds that there exists a release or threat of release of a hazardous substance at a scrap tire site and immediate action is appropriate to protect human health and the environment, the commission may, with money available from money appropriated to the commission, undertake immediate remedial or removal action at the scrap tire site to achieve the necessary protection.

(c) The reasonable expenses of immediate remedial or removal action by the commission under this section are recoverable from the persons described in Section 361.271, and the state may bring an action to recover the commission's reasonable expenses.

SECTION 9.02. Section 361.114, Health and Safety Code, is amended to read as follows:

Sec. 361.114. PROHIBITION OF ~~[GRANT OF PERMIT FOR]~~ DISPOSAL OF HAZARDOUS WASTE INTO CERTAIN GEOLOGICAL FORMATIONS ~~[SALT DOMES]~~. ~~[(a)]~~ The commission by rule shall prohibit the storage, processing, or disposal of ~~[may not issue a permit for a]~~ hazardous waste ~~[injection well]~~ in a solution-mined salt dome cavern or a sulphur mine ~~[unless the United States Environmental Protection Agency and the commission determine that sufficient rules are in place to regulate that activity].~~

~~[(b) Before issuing a permit for a hazardous waste injection well in a solution-mined salt dome cavern, the commission by order must find that there is an urgent public necessity for the hazardous waste injection well. The commission, in determining whether an urgent public necessity exists for the permitting of the hazardous waste injection well in a solution-mined salt dome cavern, must find that:~~

~~[(1) the injection well will be designed, constructed, and operated in a manner that provides at least the same degree of safety as required of other currently operating hazardous waste disposal technologies;~~

~~[(2) consistent with the need and desire to manage within the state hazardous wastes generated in the state, there is a substantial or obvious public need for additional hazardous waste disposal capacity and the hazardous waste injection well will contribute additional capacity toward servicing that need;~~

~~[(3) the injection well will be constructed and operated in a manner so as to safeguard public health and welfare and protect physical property and the environment;~~

~~[(4) the applicant has demonstrated that groundwater and surface waters, including public water supplies, will be protected from the release of hazardous waste from the salt dome waste containment cavern; and~~

~~[(5) any other criteria required by the commission to satisfy that the test of urgency has been met.]~~

SECTION 9.03. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.119 to read as follows:

Sec. 361.119. REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES.

(a) The commission by rule shall ensure that a solid waste processing facility is regulated as a solid waste facility under this chapter and is not allowed to operate unregulated as a recycling facility.

(b) The commission shall adopt rules, including recordkeeping and reporting requirements and limitations on the storage of recyclable material, to ensure that:

(1) recyclable material is reused and not abandoned or disposed of; and

(2) recyclable material does not create a nuisance or threaten or impair the environment or public health and safety.

(c) A facility that reuses or smelts recyclable materials or metals and the operations conducted and materials handled at the facility are not subject to regulation under rules adopted under this section if the owner or operator of the facility demonstrates that:

(1) the primary function of the facility is to process materials that have a resale value greater than the cost of processing the materials for subsequent beneficial use; and

(2) all the solid waste generated from processing the materials is disposed of in a solid waste facility authorized under this chapter, with the exception of small amounts of solid waste that may be inadvertently and unintentionally disposed of in another manner.

(d) A facility that is owned, operated, or affiliated with a person that has a permit to dispose of municipal solid waste is not subject to the requirements of recordkeeping and reporting adopted under Subsection (b).

(e) A solid waste processing facility that is owned or operated by a local government is not subject to rules adopted under this section.

SECTION 9.04. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.120 to read as follows:

Sec. 361.120. NOTICE OF HEARING AND REQUIREMENTS FOR REOPENING OF CLOSED OR INACTIVE LANDFILLS. (a) This section applies to any municipal solid waste landfill facility permitted by the commission or any of its predecessor or successor agencies that have either stopped accepting waste, or only accepted waste pursuant to an emergency authorization, for a period of five years or longer. This section shall not apply to any solid waste landfill facility that has received a permit but never received waste.

(b) The commission or its successor agencies shall allow any municipal solid waste landfill facility covered by this section to be reopened and to accept waste again only if the permittee demonstrates compliance with all current state, federal, and local requirements, including but not limited to the requirements of Subtitle D of the federal Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.) and the implementing Texas State regulations.

(c) Except as provided in Subsections (d) and (e), the reopening of any such facility shall be considered a major amendment as such is defined by commission rules and shall subject the permittee to all of the procedural and substantive obligations imposed by the rules applicable to major amendments.

(d) This section shall not apply to any municipal solid waste landfill facility that has received an approved modification to its permit as of the effective date of this section.

(e) For any facility which is subject to a contract of sale as of January 1, 2001, the scope of the public hearing is to be limited to land use, as provided by Section 361.069.

SECTION 9.05. (a) Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.121 to read as follows:

Sec. 361.121. LAND APPLICATION OF CERTAIN SLUDGE; PERMIT REQUIRED. (a) In this section:

(1) "Class B sludge" is sewage sludge that meets one of the pathogen reduction requirements of 30 T.A.C. 312.82(b).

(2) "Land application unit" means an area where wastes are applied onto or incorporated into the soil surface for agricultural purposes or for treatment and disposal. The term does not include manure spreading operations.

(3) "Responsible person" means the person with ultimate responsibility for the land application of the Class B sludge at a land application unit. The responsible person is:

(A) the owner of the land application unit if the sludge being land applied was generated outside this state; or

(B) the person who is land applying the sludge if the sludge being land applied was generated in this state.

(b) A responsible person may not apply Class B sludge on a land application unit unless the responsible person has obtained a permit for that land application unit issued by the commission under this section on or after September 1, 2003.

(c) The notice and hearing provisions of Subchapter M, Chapter 5, Water Code, as added by Chapter 1350, Acts of the 76th Legislature, Regular Session, 1999, apply to an application under this section for a permit, a permit amendment, or a permit renewal.

(d) In each permit, the commission shall prescribe the conditions under which it is issued, including:

(1) the duration of the permit;

(2) the location of the land application unit;

(3) the maximum quantity of Class B sludge that may be applied or disposed of under the permit;

(4) any monitoring and reporting requirements prescribed by the commission for the permit holder; and

(5) a requirement that the permit holder must report to the commission any noncompliance by the permit holder with the permit conditions or applicable commission rules.

(e) A permit does not become a vested right in the permit holder.

(f) A permit may be issued under this section for a term set by the board not to exceed six years from the date of issuance.

(g) The commission shall charge a fee for the issuance of a permit under this section in an amount not less than \$1,000 and not more than \$5,000. In determining the fee under this subsection, the commission shall consider the amount of sludge to be applied under the permit.

(h) The commission by rule shall require an applicant for a permit under this section to submit with the application, at a minimum, information regarding:

(1) the applicant;

(2) the source, quality, and quantity of sludge to be applied; and

(3) *the hydrologic characteristics of the surface water and groundwater at and within one-quarter of a mile of the land application unit.*

(i) *The commission may expand the definition of Class B sludge only by expanding the definition to include sludge that meets more stringent pathogen reduction requirements.*

(b) For the purposes of administrative efficiency, the Texas Natural Resource Conservation Commission by rule may develop categories of persons required to obtain a permit under Section 361.121(b), Health and Safety Code, as added by this Act, and may require certain categories of persons to obtain a permit earlier than the date prescribed by that section.

SECTION 9.06. Subchapter N, Chapter 361, Health and Safety Code, is amended by adding Section 361.431 to read as follows:

Sec. 361.431. PRIORITIZATION OF NEW TECHNOLOGY. (a) A political subdivision or solid waste producer shall give preference in contracting for the disposal of solid waste to license or permit holders who use processes and technologies that reduce the volume of sludge and hazardous waste that is being disposed of through beneficial use land application, landfill disposal, and other methods.

(b) Technology that reduces the volume of solid waste, destroys the solid waste, or renders the solid waste inert is preferred to methods referred to under Subsection (a), to minimize the possibility of hazardous materials entering the state's air, waterways, and water sources.

SECTION 9.07. Section 7.03 I, Water Code, is amended by amending Subsection (c) and adding Subsection (f) to read as follows:

(c) ~~If, before the issuance of a permit,~~ the commission determines that there is or has been a release of hazardous waste into the environment from a facility required to obtain a permit in accordance with an approved state program under Section 3006 of the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Section 6901 et seq.), the commission may:

(1) issue an order requiring corrective action or other response measures considered necessary to protect human health or the environment; or

(2) institute a civil action under Subchapter D.

(f) Nothing in this section limits the authority of the commission, consistent with federal law, to issue an order for the closure, post-closure care, or other remediation of hazardous waste or hazardous waste constituents from a solid waste management unit at a solid waste processing, storage, or disposal facility.

SECTION 9.08. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.122 to read as follows:

Sec. 361.122. DENIAL OF CERTAIN LANDFILL PERMITS. The commission may not issue a permit for a Type IV landfill if:

(1) the proposed site is located within 100 feet of a canal that is used as a public drinking water source or for irrigation of crops used for human or animal consumption;

(2) the proposed site is located in a county with a population of more than 225,000 that is located adjacent to the Gulf of Mexico; and

(3) prior to final consideration of the application by the commission, the commissioners of the county in which the facility is located have adopted a resolution recommending denial of the application.

ARTICLE 10. EDWARDS AQUIFER

SECTION 10.01. As used in this article, "Edwards Aquifer" has the meaning defined in Section 26.046, Water Code.

SECTION 10.02. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.050 to read as follows:

Sec. 26.050. DIGITAL COPIES OF BOUNDARY LINES. The commission shall make available to the public digital copies of the Recharge, Transition, and Contributing Zone boundary lines, when they become available.

SECTION 10.03. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.051 to read as follows:

Sec. 26.051. ANNUAL REPORT ON EDWARDS AQUIFER PROGRAM. The commission shall report annually on the Edwards Aquifer Program expenses and allocation of fees.

SECTION 10.04. Subchapter D, Chapter 26, Water Code, is amended by adding Section 26.137 to read as follows:

Sec. 26.137. COMMENT PERIOD FOR EDWARDS AQUIFER PROTECTION PLANS. The commission shall provide for a 30-day comment period in the review process for Edwards Aquifer Protection Plans in the Contributing Zone of the Edwards Aquifer as provided in 30 T.A.C. Section 213.4 (a)(2).

ARTICLE 11. MATTERS RELATED TO REMEDIATION

SECTION 11.01. Subchapter F, Chapter 361, Health and Safety Code, is amended by adding Section 361.1875 to read as follows:

Sec. 361.1875. EXCLUSION OF CERTAIN POTENTIALLY RESPONSIBLE PARTIES. The commission may not name a person as a responsible party for an enforcement action or require a person to reimburse remediation costs for a site if the commission has conducted an investigation of a site owned or operated by the person and as a result of the investigation has determined that:

- (1) the contaminants that are the subject of investigation under this subchapter appear to originate from an up-gradient, off-site source that is not owned or operated by the person;*
- (2) additional corrective action is not required at the site owned or operated by the person; and*
- (3) the commission will not undertake a formal enforcement action in the matter.*

ARTICLE 12. REGULATION OF CERTAIN ANIMAL FEEDING OPERATIONS

SECTION 12.01. Sections 26.001(10) and (13), Water Code, are amended to read as follows:

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) ~~["agricultural waste"]~~ does not include tail water or runoff water from irrigation or rainwater runoff from *other* cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) [~~"pollutant"~~] does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

SECTION 12.02. Chapter 26, Water Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROTECTION OF CERTAIN WATERSHEDS

Sec. 26.501. DEFINITIONS. In this subchapter:

(1) "Concentrated animal feeding operation" has the meaning assigned by 30 T.A.C. Section 321.32 on the effective date of this subchapter.

(2) "New concentrated animal feeding operation" means a proposed concentrated animal feeding operation, any part of which is located on property not previously authorized by the state to be operated as a concentrated animal feeding operation.

(3) "Historical waste application field" means an area of land that at any time since January 1, 1995, has been owned or controlled by an operator of a concentrated animal feeding operation on which agricultural waste from a concentrated animal feeding operation has been applied.

Sec. 26.502. APPLICABILITY. This subchapter applies only to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. In this subchapter, "major sole source impairment zone" means a watershed that contains a reservoir:

(1) that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and

(2) at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:

(A) at least in part because of concerns regarding pathogens and phosphorus; and

(B) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.

Sec. 26.503. REGULATION OF CERTAIN CONCENTRATED ANIMAL FEEDING OPERATION WASTES. (a) The commission may authorize the construction or operation of a new concentrated animal feeding operation, or an increase in the animals confined under an existing operation, only by a new or amended individual permit.

(b) The individual permit issued or amended under Subsection (a) must:

(1) provide for management and disposal of waste in accordance with Subchapter B, Chapter 321, Title 30, Texas Administrative Code;

(2) require that 100 percent of the collectible manure produced by the additional animals in confinement at an expanded operation or all of the animals in confinement at a new operation must be:

- (A) disposed of or used outside of the watershed;
- (B) delivered to a composting facility approved by the executive director;
- (C) applied as directed by the commission to a waste application field owned or controlled by the owner of the concentrated animal feeding operation, if the field is not a historical waste application field;
- (D) put to another beneficial use approved by the executive director; or
- (E) applied to a historical waste application field that is owned or operated by the owner or operator of the concentrated animal feeding operation only if:

(i) results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer parts per million of extractable phosphorus (reported as P); or

(ii) the manure is applied, with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:

(a) an employee of the United States Department of Agriculture's Natural Resources Conservation Service;

(b) a nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;

(c) the State Soil and Water Conservation Board;

(d) the Texas Agricultural Extension Service;

(e) an agronomist or soil scientist on the full-time staff of an accredited university located in this state; or

(f) a professional agronomist or soil scientist certified by the American Society of Agronomy.

(c) The commission may approve a detailed nutrient utilization plan approved by the commission that is developed by a professional agronomist or soil scientist certified by the American Society of Agronomy only if the commission finds that another person listed by Subsection (b)(2)(E)(ii) cannot develop a plan in a timely manner.

(d) The commission may not issue a general permit to authorize the discharge of agricultural waste into or adjacent to waters in this state from an animal feeding operation if such waters are within a major sole source impairment zone.

(e) The commission and employees or agents of the commission may enter public or private property at any reasonable time for activities related to the purposes of this subchapter. The commission may enforce this authority as provided by Section 7.032, 7.051, 7.052, or 7.105.

(f) This section does not limit the commission's authority to include in an individual or general permit under this chapter provisions necessary to protect a water resource in this state.

Sec. 26.504. WASTE APPLICATION FIELD SOIL SAMPLING AND TESTING. (a) The operator of a concentrated animal feeding operation shall contract with a person described by Section 26.503(b)(2)(E)(ii) selected by the executive director to collect one or more representative composite soil samples from each waste application field. The operator shall have sampling performed under this subsection not less often than once every 12 months.

(b) Each sample collected under this section must be tested for phosphorus and any other nutrient designated by the executive director. The test results must be made available to the executive director and the operator of the concentrated animal feeding operation. The test results are public records of the commission.

(c) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 500 parts per million, the operator shall file with the commission a new or amended

nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(d) If the samples tested under Subsection (b) show a phosphorus level in the soil of more than 200 parts per million but not more than 500 parts per million, the operator shall:

(1) file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component that is certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii); or

(2) show that the level is supported by a nutrient utilization plan certified as acceptable by a person listed by Section 26.503(b)(2)(E)(ii).

(e) The owner or operator of a waste application field required by this section to have a nutrient utilization plan with a phosphorus reduction component for which the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus is subject to enforcement for a violation of this subchapter at the discretion of the executive director. The executive director, in determining whether to take an enforcement action under this subsection, shall consider any explanation presented by the owner or operator regarding the reasons for the lack of phosphorus reduction, including an act of God, meteorologic conditions, diseases, vermin, crop conditions, or variability of soil testing results.

(f) The commission shall adopt rules to implement this section. The rules must provide for the scheduling and manner of the required soil testing and the form, content, and deadlines for plans required under this section.

ARTICLE 13. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS

SECTION 13.01. Subchapter I, Chapter 26, Water Code, is amended by adding Section 26.3476 to read as follows:

Sec. 26.3476. SECONDARY CONTAINMENT REQUIRED FOR TANKS LOCATED OVER CERTAIN AQUIFERS. (a) In this section, "secondary containment" means a method by which a secondary wall or barrier is installed around an underground storage tank system in a manner designed to prevent a release of a regulated substance from migrating beyond the secondary wall or barrier before the release can be detected. A secondary containment system may include an impervious liner or vault surrounding a primary tank or piping system or a double-wall tank or piping system.

(b) An underground storage tank system, at a minimum, shall incorporate a method for secondary containment if the system is located in:

(1) the outcrop of a major aquifer composed of limestone and associated carbonate rocks of Cretaceous age or older; and

(2) a county that:

(A) has a population of at least one million and relies on groundwater for at least 75 percent of the county's water supply; or

(B) has a population of at least 75,000 and is adjacent to a county described by Paragraph (A).

(c) Section 26.3475(e) applies to an underground storage tank system that is subject to this section as if a violation of this section were a violation of Section 26.3475.

(d) Notwithstanding Section 26.359(b), a political subdivision under this section may adopt standards for the containment of underground storage tank systems.

ARTICLE 14. REGULATION AND REMEDIATION OF UNDERGROUND AND ABOVEGROUND STORAGE TANKS

SECTION 14.01. Section 26.342, Water Code, is amended by amending Subdivisions (9)-(17) and adding Subdivision (18) to read as follows:

(9) *"Owner" means a person who holds legal possession or ownership of an interest in an underground storage tank system or an aboveground storage tank. If the actual ownership of an underground storage tank system or an aboveground storage tank is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the tank system is located is considered the owner of the system unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, or bill of sale, or by other legally acceptable means that the underground storage tank system or aboveground storage tank is owned by another person. A person that has registered as an owner of an underground storage tank system or aboveground storage tank with the commission under Section 26.346 after September 1, 1987, shall be considered the tank system owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the tank system was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Section 26.3514 (Limits on Liability of Lender), Section 26.3515 (Limits on Liability of Corporate Fiduciary), and Section 26.3516 (Limits on Liability of Taxing Unit).*

(10) "Person" means an individual, trust, firm, joint-stock company, corporation, government corporation, partnership, association, state, municipality, commission, political subdivision of a state, an interstate body, a consortium, joint venture, commercial entity, or the United States government.

(11) ~~(10)~~ "Petroleum product" means a petroleum product that is obtained from distilling and processing crude oil and that is capable of being used as a fuel for the propulsion of a motor vehicle or aircraft, including motor gasoline, gasohol, other alcohol blended fuels, aviation gasoline, kerosene, distillate fuel oil, and #1 and #2 diesel. The term does not include naphtha-type jet fuel, kerosene-type jet fuel, or a petroleum product destined for use in chemical manufacturing or feedstock of that manufacturing.

(12) ~~(11)~~ "Petroleum storage tank" means:

(A) any one or combination of aboveground storage tanks that contain petroleum products and that are regulated by the commission; or

(B) any one or combination of underground storage tanks and any connecting underground pipes that contain petroleum products and that are regulated by the commission.

(13) ~~(12)~~ "Regulated substance" means an element, compound, mixture, solution, or substance that, when released into the environment, may present substantial danger to the public health, welfare, or the environment.

(14) ~~(13)~~ "Release" means any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground or aboveground storage tank into groundwater, surface water, or subsurface soils.

(15) ~~(14)~~ "Risk-based corrective action" means site assessment or site remediation, the timing, type, and degree of which is determined according to case-by-case consideration of actual or potential risk to public health from environmental exposure to a regulated substance released from a leaking underground or aboveground storage tank.

(16) ~~(15)~~ "Spent oil" means a regulated substance that is a lubricating oil or similar petroleum substance which has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of that use by physical or chemical impurities, including spent motor vehicle lubricating oils, transmission fluid, or brake fluid.

(17) ~~(16)~~ "Underground storage tank" means any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10 percent or more beneath the surface of the ground.

(18) [(17)] "Vehicle service and fueling facility" means a facility where motor vehicles are serviced or repaired and where petroleum products are stored and dispensed from fixed equipment into the fuel tanks of motor vehicles.

SECTION 14.02. Sections 26.346(a) and (c), Water Code, are amended to read as follows:

(a) An underground or aboveground storage tank must be registered with the commission unless the tank is exempt from regulation under Section 26.344 of this code or the tank is covered under Subsection (b) of this section. The commission by rule shall establish the procedures and requirements for establishing and maintaining current registration information concerning underground and aboveground storage tanks. The commission shall also require that an owner or operator of an underground storage tank *used for storing motor fuels (as defined in commission rule)* complete an annual underground storage tank compliance certification form.

(c) The commission shall issue to each person who owns or operates a petroleum storage tank that is registered under this section a registration and compliance confirmation certificate that includes a brief description of:

(1) the responsibility of the owner or operator under Section 26.3512 of this code;

(2) the rights of the owner or operator to participate in the petroleum storage tank remediation account and the groundwater protection cleanup program established under this subchapter; and

(3) the responsibility of the owner or operator of an underground storage tank to accurately complete the part of the registration form pertaining to the certification of compliance with underground storage tank administrative requirements and technical standards *if the tank is used for storing motor fuels (as defined in commission rule)*.

SECTION 14.03. Section 26.351, Water Code, is amended by adding Subsections (f), (g), and (h) to read as follows:

(f) The person performing corrective action under this section, if the release was reported to the commission on or before December 22, 1998, shall meet the following deadlines:

(1) a complete site assessment and risk assessment (including, but not limited to, risk-based criteria for establishing target concentrations), as determined by the executive director, must be received by the agency no later than September 1, 2002;

(2) a complete Corrective Action Plan, as determined by the executive director and including, but not limited to, completion of pilot studies and recommendation of a cost-effective and technically appropriate remediation methodology, must be received by the agency no later than September 1, 2003. The person may, in lieu of this requirement, submit by this same deadline a demonstration that a Corrective Action Plan is not required for the site in question under commission rules. Such demonstration must be to the executive director's satisfaction;

(3) for those sites found under Subdivision (2) to require a Corrective Action Plan, that plan must be initiated and proceeding according to the requirements and deadlines in the approved plan no later than March 1, 2004;

(4) for sites which require either a Corrective Action Plan or groundwater monitoring, a comprehensive and accurate annual status report concerning those activities must be submitted to the agency;

(5) for sites which require either a Corrective Action Plan or groundwater monitoring, all deadlines set by the executive director concerning the Corrective Action Plan or approved groundwater monitoring plan shall be met; and

(6) site closure requests for all sites where the executive director agreed in writing that no Corrective Action Plan was required must be received by the agency no later than September 1, 2005. The request must be complete, as judged by the executive director.

(g) For persons regulated under Subsection (f), their failure to comply with any deadline listed in Subsection (f) is a violation of this section, and the executive director may enforce such

a violation under Chapter 7 of this code. A missed deadline that is the fault of the person, his agent, or contractor shall also eliminate reimbursement eligibility as described by Section 26.3571(b). If it can be established to the executive director's satisfaction that the deadline was not missed at the fault of the person, his agent, or contractor, then reimbursement eligibility is not affected under this subsection.

(h) A person's liability to perform corrective action under this chapter is unrelated to any possible reimbursements the person may be eligible for under Section 26.3571.

SECTION 14.04. Section 26.3512(b), Water Code, is amended to read as follows:

(b) Funds from the petroleum storage tank remediation account may not be used to pay, and the owner or operator of a petroleum storage tank ordered by the commission to take corrective action is responsible for payment of, the following:

- (1) the owner or operator contribution described by Subsections (e)-(k);
- (2) any expenses for corrective action that exceed the applicable amount specified by Section 26.3573(m);
- (3) any expenses for corrective action that are not covered by payment from the petroleum storage tank remediation account under the rules or decisions of the commission under this subchapter;
- (4) any expenses for corrective action not ordered or agreed to by the commission; ~~or~~
- (5) any expenses for corrective action incurred for confirmed releases initially discovered and reported to the commission after December 22, 1998; *and*
- (6) any corrective action expenses for which reimbursement is prohibited under Section 26.3571, 26.3573, or 26.361.*

SECTION 14.05. Section 26.355(d), Water Code, is amended to read as follows:

(d) If the commission uses money from the petroleum storage tank remediation account for corrective action or enforcement and if the costs are recovered under this section, the commission may not recover more than the amount of the applicable owner or operator contribution described by Section 26.3512~~[(e)]~~ of this code from an eligible owner or operator for corrective action for each occurrence. *However, this limitation is not applicable to cost recovery actions initiated by the executive director at sites where the executive director has determined that the owner or operator is in violation of Section 26.351(f).*

SECTION 14.06. Section 26.3571, Water Code, is amended by amending Subsection (b) and adding Subsections (g) and (h) to read as follows:

(b) To be an eligible owner or operator for purposes of this subchapter, a person must *not* have missed any of the deadlines described in Section 26.351(f) and must:

(1) be one of the following:

(A) an owner or operator of a petroleum storage tank that is subject to regulation under this subchapter;

(B) an owner of land that can clearly prove that the land has been contaminated by a release of petroleum products from a petroleum storage tank that is subject to regulation under this subchapter, whether or not the tank is still attached to that land; or

(C) a lender that has a bona fide security or lienhold interest in or mortgage lien on any property contaminated by the release of petroleum products from a petroleum storage tank subject to regulation under this subchapter, or that forecloses on or receives an assignment or deed in lieu of foreclosure and becomes the owner of such property;

(2) be in compliance with this subchapter as determined by the commission; and

(3) meet qualifying criteria established by the commission under Subsection (a) of this section.

(g) An otherwise eligible owner or operator who misses a deadline referenced in Subsection (b) shall be considered ineligible for reimbursement under this subchapter.

(h) Nothing in this section reduces the liability to perform corrective action created under Section 26.351 and other parts of this subchapter.

SECTION 14.07. Section 26.3572(b), Water Code, is amended to read as follows:

(b) In administering the program, the commission shall:

(1) negotiate with or direct responsible parties in site assessment and remediation matters using risk-based corrective action;

(2) approve site-specific corrective action plans for each site as necessary, using risk-based corrective action;

(3) review and inspect site assessment and remedial activities and reports;

(4) use risk-based corrective action procedures as determined by commission rule to establish cleanup levels;

(5) adopt by rule criteria for assigning a priority to each site using risk-based corrective action and assign a priority to each site according to those criteria;

(6) adopt by rule criteria for:

(A) risk-based corrective action site closures; and

(B) the issuance of a closure letter to the owner or operator of a tank site on completion of the commission's corrective action requirements; and

(7) process claims for petroleum storage tank remediation account disbursement *in accordance with this subchapter.*

SECTION 14.08. Section 26.3573, Water Code, is amended by amending Subsection (d) and by adding Subsections (r) and (s) to read as follows:

(d) The commission may use the money in the petroleum storage tank remediation account to pay:

(1) necessary expenses associated with the administration of the petroleum storage tank remediation account and the groundwater protection cleanup program, not to exceed an amount equal to: *11.8 [6.7] percent of the gross receipts of that account for FY 02/03; 16.40 percent of the gross receipts of that account for FY 04/05; and 21.1 percent of the gross receipts of that account for FY 06/07;*

(2) expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release from a petroleum storage tank, whether those expenses are incurred by the commission or pursuant to a contract between a contractor and an eligible owner or operator as authorized by this subchapter; and

(3) subject to the conditions of Subsection (e) of this section, expenses associated with investigation, cleanup, or corrective action measures performed in response to a release or threatened release of hydraulic fluid or spent oil from hydraulic lift systems or tanks located at a vehicle service and fueling facility and used as part of the operations of that facility.

(r) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action performed after September 1, 2005.

(s) The petroleum storage tank remediation account may not be used to reimburse any person for corrective action contained in a reimbursement claim filed with the commission after March 1, 2006.

SECTION 14.09. Sections 26.3574(b), (x), (y), (z), and (aa), Water Code, are amended to read as follows:

(b) A fee is imposed on the delivery of a petroleum product on withdrawal from bulk of that product as provided by this subsection. Each operator of a bulk facility on withdrawal from bulk of a petroleum product shall collect from the person who orders the withdrawal a fee in an amount determined as follows:

(1) *\$12.50 [18.75] for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2002 and Fiscal Year 2003; \$10 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2004 and Fiscal Year 2005;*

\$5 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2006; and \$2 for each delivery into a cargo tank having a capacity of less than 2,500 gallons for Fiscal Year 2007;

(2) \$25 [~~\$37.50~~] for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; \$20 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; \$10 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2006; and \$4 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons for Fiscal Year 2007;

(3) \$37.50 [~~\$56.25~~] for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; \$30 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; \$15 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2006; and \$6 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons for Fiscal Year 2007;

(4) \$50 [~~\$75~~] for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2002 and Fiscal Year 2003; \$40 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2004 and Fiscal Year 2005; \$20 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2006; and \$8 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons for Fiscal Year 2007; and

(5) a \$25 [~~\$37.50~~] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2002 and Fiscal Year 2003; \$20 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2004 and Fiscal Year 2005; \$10 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2006; and \$4 for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more for Fiscal Year 2007.

(x) [After the deposits have been made to the credit of the general revenue fund under Section 403.092(e)(1), Government Code, as added by Chapter 533, Acts of the 73rd Legislature, 1993, the fee imposed under this section may not be collected or required to be paid on or after the first day of the second month following notification by the commission of the date on which the unobligated balance in the petroleum storage tank remediation account equals or exceeds \$100 million. The commission shall notify the comptroller in writing of the date on which the unobligated balance equals or exceeds \$100 million.

[(y) If the unobligated balance in the petroleum storage tank remediation account falls below \$25 million, the fee shall be reinstated, effective on the first day of the second month following notification by the commission, in amounts determined as follows:

[(1) \$9.38 for each delivery into a cargo tank having a capacity of less than 2,500 gallons;

[(2) \$18.75 for each delivery into a cargo tank having a capacity of 2,500 gallons or more but less than 5,000 gallons;

[(3) \$28.13 for each delivery into a cargo tank having a capacity of 5,000 gallons or more but less than 8,000 gallons;

[(4) \$37.50 for each delivery into a cargo tank having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

[(5) an \$18.75 fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank having a capacity of 10,000 gallons or more.

~~[(z) For purposes of Subsections (x) and (y) of this section, the unobligated balance in the petroleum storage tank remediation account shall be determined by subtracting from the cash balance of the account at the end of each month the sum of the total balances remaining on all contracts entered by the commission or an eligible owner for corrective action plus the total estimates made by the commission of allowable costs for corrective action that are unpaid relating to all commission orders issued before that date to enforce this subchapter.~~

~~[(aa)] The commission shall report to the Legislative Budget Board at the end of each fiscal quarter on the financial status of the petroleum storage tank remediation account.~~

SECTION 14.10. Sections 26.359 and 26.361, Water Code, are amended to read as follows:

Sec. 26.359. LOCAL REGULATION OR ORDINANCE. *(a) In this section, "local government" means a school district, county, municipality, junior college district, river authority, water district or other special district, or other political subdivision created under the constitution or a statute of this state.*

~~(b) A [This subchapter establishes a unified statewide program for underground and surface water protection, and any local] regulation or ordinance adopted by a local government that imposes standards [is effective only to the extent the regulation or ordinance does not conflict with the standards adopted] for the design, construction, installation, or operation of underground storage tanks is not valid [under this subchapter].~~

~~(c) This section does not apply to a regulation or ordinance in effect as of January 1, 2001.~~

Sec. 26.361. EXPIRATION OF REIMBURSEMENT PROGRAM. ~~[(a)]~~ Notwithstanding any other provision of this subchapter, the reimbursement program established under this subchapter expires September 1, 2006 [2003]. On or after September 1, 2006 [2003], the commission may not use money from the petroleum storage tank remediation account to reimburse an eligible owner or operator for any expenses of corrective action or to pay the claim of a person who has contracted with an eligible owner or operator to perform corrective action.

~~[(b) On or after March 1, 2002, the commission may not collect a fee under Section 26.3574 of this code.]~~

ARTICLE 15. REGULATION OF AIR POLLUTION

SECTION 15.01. Section 382.019(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Section 382.037(g), or another provision of this chapter, the [The] commission by rule may provide requirements concerning the particular method to be used to control and reduce emissions from engines used to propel land vehicles.

SECTION 15.02. Section 382.037, Health and Safety Code, is amended by amending Subsection (g) and adding Subsections (h) and (i) to read as follows:

(g) The commission may not establish, before January 1, 2004, vehicle fuel content standards to provide for vehicle fuel content for clean motor vehicle fuels for any area of the state that are more stringent or restrictive [other] than those standards promulgated by the United States Environmental Protection Agency applicable to that area except as provided in Subsection (h) unless the fuel is specifically authorized by the legislature [or unless it is demonstrated to be necessary for the attainment of federal ozone ambient air quality standards or, following appropriate health studies and in consultation with the Texas Department of Health, it is determined to be necessary for the protection of public health].

(h) The commission may not require the distribution of Texas low-emission diesel as described in revisions to the State Implementation Plan for the control of ozone air pollution prior to February 1, 2005.

(i) The commission may consider, as an alternative method of compliance with Subsection (h), fuels to achieve equivalent emissions reductions.

SECTION 15.03. Section 382.039(a), Health and Safety Code, is amended to read as follows:

(a) *Except as provided by Section 382.037(g) or another provision of this chapter, the [The]* commission shall coordinate with federal, state, and local transportation planning agencies to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles.

SECTION 15.04. The changes in law made by this Act do not apply to fuel standards adopted by the Texas Natural Resource Conservation Commission before September 1, 2000.

ARTICLE 16. CONFORMING AMENDMENTS

SECTION 16.01. Section 5.174(a), Water Code, is amended to read as follows:

(a) Except as otherwise specifically provided by this code and subject to the specific limitations provided by this code, on application of any person the commission shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the commission. A certified copy with the seal of the commission and the signature of the *presiding officer* [chairman] of the commission or the executive director or chief clerk is admissible as evidence in any court or administrative proceeding.

SECTION 16.02. Section 11.323(a), Water Code, is amended to read as follows:

(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the *presiding officer of the commission* [chairman] and bearing the seal of the commission.

SECTION 16.03. Sections 26.0135(a) and (b), Water Code, are amended to read as follows:

(a) To ensure clean water, the commission shall establish the strategic and comprehensive monitoring of water quality and the periodic assessment of water quality in each watershed and river basin of the state. In order to conserve public funds and avoid duplication of effort, subject to adequate funding under *Section 26.0291* [Subsection (h)], river authorities shall, to the greatest extent possible and under the supervision of the commission, conduct water quality monitoring and assessments in their own watersheds. Watershed monitoring and assessments involving agricultural or silvicultural nonpoint source pollution shall be coordinated through the State Soil and Water Conservation Board with local soil and water conservation districts. The water quality monitoring and reporting duties under this section apply only to a river authority that has entered into an agreement with the commission to perform those duties. The commission, either directly or through cooperative agreements and contracts with local governments, shall conduct monitoring and assessments of watersheds where a river authority is unable to perform an adequate assessment of its own watershed. The monitoring program shall provide data to identify significant long-term water quality trends, characterize water quality conditions, support the permitting process, and classify unclassified waters. The commission shall consider available monitoring data and assessment results in developing or reviewing wastewater permits and stream standards and in conducting other water quality management activities. The assessment must include a review of wastewater discharges, nonpoint source pollution, nutrient loading, toxic materials, biological health of aquatic life, public education and involvement in water quality issues, local and regional pollution prevention efforts, and other factors that affect water quality within the watershed. The monitoring and assessment required by this section is a continuing duty, and the monitoring and assessment shall be periodically revised to show changes in the factors subject to assessment.

(b) In order to assist in the coordination and development of assessments and reports required by this section, a river authority shall organize and lead a basin-wide steering committee that includes persons paying fees under *Section 26.0291* [Subsection (h)], private citizens, the State Soil and Water Conservation Board, representatives from other appropriate state agencies, political subdivisions, and other persons with an interest in water quality matters of the watershed or river basin. Based on committee and public input, each steering committee shall

develop water quality objectives and priorities that are achievable considering the available technology and economic impact. The objectives and priorities shall be used to develop work plans and allocate available resources under *Section 26.0291* [~~Subsection (h)~~]. Each committee member shall help identify significant water quality issues within the basin and shall make available to the river authority all relevant water quality data held by the represented entities. A river authority shall also develop a public input process that provides for meaningful comments and review by private citizens and organizations on each basin summary report. A steering committee established by the commission to comply with this subsection in the absence of a river authority or other qualified local government is not subject to *Chapter 2110, Government Code* [~~Article 6252-33, Revised Statutes~~].

SECTION 16.04. *Section 26.0135(d)*, Water Code, as amended by Chapters 101 and 1082, Acts of the 75th Legislature, Regular Session, 1997, is reenacted and amended to read as follows:

(d) In the appropriate year of the cycle provided by commission rules adopted to implement *Section 26.0285*, each river authority shall submit a written summary report to the commission, State Soil and Water Conservation Board, and Parks and Wildlife Department on the water quality assessment of the authority's watershed. The summary report must identify concerns relating to the watershed or bodies of water, including an identification of bodies of water with impaired or potentially impaired uses, the cause and possible source of use impairment, and recommended actions the commission may take to address those concerns. The summary report must discuss the public benefits from the water quality monitoring and assessment program, including efforts to increase public input in activities related to water quality and the effectiveness of targeted monitoring in assisting the permitting process. A river authority shall submit a summary report after the report has been approved by the basin steering committee and coordinated with the public and the commission. A river authority shall hold basin steering committee meetings and shall invite users of water and wastewater permit holders in the watershed who pay fees under *Section 26.0291* [~~Subsection (h)~~] to review the draft of the work plans and summary report. A river authority shall inform those parties of the availability and location of the summary report for inspection and shall solicit input from those parties concerning their satisfaction with or suggestions for modification of the summary report for the watershed, the operation or effectiveness of the watershed monitoring and assessment program authorized by this section, and the adequacy, use, or equitable apportionment of the program's costs and funds. A river authority shall summarize all comments received from persons who pay fees under *Section 26.0291* [~~Subsection (h)~~] and from steering committee members and shall submit the report and the summaries to the governor, the lieutenant governor, and the speaker of the house of representatives not later than the 90th day after the date the river authority submits the summary report to the commission and other agencies.

SECTION 16.05. *Section 26.028(d)*, Water Code, is amended to read as follows:

(d) Notwithstanding any other provision of this chapter, the commission, at a regular meeting without the necessity of holding a public hearing, may approve an application to renew or amend a permit if:

- (1) the applicant is not applying to:
 - (A) increase significantly the quantity of waste authorized to be discharged; or
 - (B) change materially the pattern or place of discharge;
- (2) the activities to be authorized by the renewed or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (3) for NPDES permits, notice and the opportunity to request a public meeting shall be given in compliance with NPDES program requirements, and the commission shall consider and respond to all timely received and significant public comment; and
- (4) the commission determines that an applicant's compliance history *under the method for evaluating compliance history developed by the commission under Section 5.754* [~~for the~~

~~preceding five years~~] raises no issues regarding the applicant's ability to comply with a material term of its permit.

SECTION 16.06. Section 26.0281, Water Code, is amended to read as follows:

Sec. 26.0281. CONSIDERATION OF ~~[PAST PERFORMANCE AND]~~ COMPLIANCE HISTORY. In considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste, the commission shall consider *the* ~~[any adjudicated decision on or]~~ compliance history ~~[proceeding addressing past performance and compliance]~~ of the applicant and its operator *under the method for evaluating compliance history developed by the commission under Section 5.754* ~~[with the laws of this state governing waste discharge, waste treatment, or waste disposal facilities and with the terms of any permit or order issued by the commission].~~

SECTION 16.07. Section 26.040(h), Water Code, is amended to read as follows:

(h) Notwithstanding other provisions of this chapter, the commission, after hearing, shall deny or suspend a discharger's authority to discharge under a general permit if the commission determines that the ~~[discharger operates any facility for which the]~~ discharger's compliance history *is in the lowest classification under Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections* ~~[contains violations constituting a recurring pattern of egregious conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violations].~~ A hearing under this subsection is not subject to Chapter 2001, Government Code.

SECTION 16.08. Section 27.051, Water Code, is amended by amending Subsections (d) and (e) and adding Subsection (h) to read as follows:

(d) The commission, in determining if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under Subsection (a)(1) ~~[of this section]~~, shall consider, but shall not be limited to the consideration of:

(1) compliance history of the applicant *under the method for evaluating compliance history developed by the commission under Section 5.754* and in accordance with the provisions of Subsection (e) ~~[of this section]~~;

(2) whether there is a practical, economic, and feasible alternative to an injection well reasonably available to manage the types and classes of hazardous waste; and

(3) whether the applicant will maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this subdivision if the policy:

(A) covers the injection well; and

(B) is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(e) *Consistent with Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, the* ~~[The]~~ commission shall establish a procedure *for preparing summaries of the applicant's compliance history* ~~[by rule for its preparation of compliance summaries relating to the history of compliance and noncompliance by the applicant with the rules adopted or orders or permits issued by the commission under this chapter for any injection well for which a permit has been issued under this chapter].~~ The ~~[compliance]~~ summaries shall be made available to the applicant and any interested person after the commission has completed its technical review of the permit application and prior to the promulgation of the public notice relating to the issuance of the permit. Evidence of compliance or noncompliance by an applicant for an injection well for the disposal of hazardous waste with the rules adopted or orders or permits issued by the commission under this chapter may be offered by any party at a hearing

on the applicant's application and admitted into evidence subject to applicable rules of evidence. *In accordance with this subsection and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections, evidence of the compliance history of an applicant for an injection well may be offered at a hearing on the application and may be admitted into evidence, subject to the rules of evidence.* All evidence admitted, including compliance history, shall be considered by the commission in determining whether to issue, amend, extend or renew a permit.

(h) In determining whether the use or installation of an injection well is in the public interest under Subsection (a)(1), the commission shall consider the compliance history of the applicant in accordance with Subsection (e) and Sections 5.753 and 5.754 and rules adopted and procedures developed under those sections.

SECTION 16.09. Section 361.020(d), Health and Safety Code, is amended to read as follows:

(d) The commission in developing a comprehensive statewide strategic plan shall:

(1) consult with:

- (A) the agency's waste minimization, recycling, or reduction division;
- (B) the municipal solid waste management and resource recovery advisory council;
- (C) the *pollution prevention* ~~[waste reduction]~~ advisory committee;
- (D) the interagency coordinating council; and
- (E) local governments, appropriate regional and state agencies, businesses, citizen groups, and private waste management firms;

(2) hold public hearings in different regions of the state; and

(3) publish the proposed plan in the Texas Register.

SECTION 16.10. Sections 361.084(a) and (c), Health and Safety Code, are amended to read as follows:

(a) The commission by rule shall establish a procedure to prepare compliance summaries relating to the applicant's solid waste management activities *in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code.*

(c) Evidence of compliance or noncompliance by an applicant for a solid waste management facility permit with agency rules, permits, other orders, or evidence of a final determination of noncompliance with federal statutes or statutes of any state ~~[in the preceding five years]~~ concerning solid waste management may be:

(1) offered by a party at a hearing concerning the application; and

(2) admitted into evidence subject to applicable rules of evidence.

SECTION 16.11. Section 361.088(f), Health and Safety Code, is amended to read as follows:

(f) Notwithstanding Subsection (e), if the commission determines that an applicant's compliance history *under the method for evaluating compliance history developed by the commission under Section 5.754, Water Code,* ~~[for the preceding five years]~~ raises an issue regarding the applicant's ability to comply with a material term of its permit, the commission shall provide an opportunity to request a contested case hearing.

SECTION 16.12. Sections 361.089(a), (e), and (f), Health and Safety Code, are amended to read as follows:

(a) The commission may, for good cause, deny or amend a permit it issues or has authority to issue for reasons pertaining to public health, air or water pollution, or land use, or for *having a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections* ~~[a violation of this chapter or other applicable laws or rules controlling the management of solid waste]~~.

(e) The commission may deny an original or renewal permit if it is found, after notice and hearing, that:

(1) *the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and*

procedures developed under those sections [record of environmental violations in the preceding five years at the permitted site;

[(2) the applicant has a record of environmental violations in the preceding five years at any site owned, operated, or controlled by the applicant];

(2) [(3)] the permit holder or applicant made a false or misleading statement in connection with an original or renewal application, either in the formal application or in any other written instrument relating to the application submitted to the commission, its officers, or its employees;

(3) [(4)] the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission; or

(4) [(5)] the permit holder or applicant is unable to ensure that the management of the hazardous waste management facility conforms or will conform to this title and the rules of the commission.

(f) Before denying a permit under this section, the commission must find:

(1) that the applicant or permit holder has a compliance history that is in the lowest classification under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections [a violation or violations are significant and that the permit holder or applicant has not made a substantial attempt to correct the violations]; or

(2) that the permit holder or applicant is indebted to the state for fees, payment of penalties, or taxes imposed by this title or by a rule of the commission.

SECTION 16.13. Sections 382.0518(b) and (c), Health and Safety Code, are amended to read as follows:

(b) The commission shall grant within a reasonable time a permit to construct or modify a facility if, from the information available to the commission, including information presented at any hearing held under Section 382.056(k) [382.056(d)], the commission finds:

(1) the proposed facility for which a permit or a special permit is sought will use at least the best available control technology, considering the technical practicability and economic reasonableness of reducing or eliminating the emissions resulting from the facility; and

(2) no indication that the emissions from the facility will contravene the intent of this chapter, including protection of the public's health and physical property.

(c) In considering the issuance, amendment, or renewal of a permit, the commission may consider *the applicant's compliance history in accordance with the method for evaluating compliance history developed by the commission under Section 5.754, Water Code [any adjudicated decision or compliance proceeding within the five years before the date on which the application was filed that addressed the applicant's past performance and compliance with the laws of this state, another state, or the United States governing air contaminants or with the terms of any permit or order issued by the commission].*

SECTION 16.14. Section 382.055(d), Health and Safety Code, is amended to read as follows:

(d) In determining whether and under which conditions a preconstruction permit should be renewed, the commission shall consider, at a minimum:

(1) [whether] the performance of the owner or operator of the facility according to the method developed by the commission under Section 5.754, Water Code [is or has been in substantial compliance with this chapter and the terms of the existing permit]; and

(2) the condition and effectiveness of existing emission control equipment and practices.

SECTION 16.15. Section 382.056(o), Health and Safety Code, is amended to read as follows:

(o) Notwithstanding other provisions of this chapter, the commission may hold a hearing on a permit amendment, modification, or renewal if the commission determines that the application involves a facility for which the applicant's compliance history *is in the lowest classification*

under Sections 5.753 and 5.754, Water Code, and rules adopted and procedures developed under those sections ~~[contains violations which are unresolved and which constitute a recurring pattern of egregious conduct which demonstrates a consistent disregard for the regulatory process, including the failure to make a timely and substantial attempt to correct the violations].~~

SECTION 16.16. Section 401.110, Health and Safety Code, is amended to read as follows:

Sec. 401.110. DETERMINATION ON LICENSE. In making a determination whether to grant, deny, amend, revoke, suspend, or restrict a license or registration, the ~~[department or]~~ commission may consider ~~[these aspects of]~~ an applicant's or license holder's ~~[background that bear materially on the ability to fulfill the obligations of licensure, including]~~ technical competence and *compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code* ~~[the applicant's or license holder's record in areas involving radiation].~~

SECTION 16.17. Section 401.112(a), Health and Safety Code, is amended to read as follows:

(a) The department or commission, within its jurisdiction, in making a licensing decision on a specific license application to process or dispose of low-level radioactive waste from other persons, shall consider:

- (1) site suitability, geological, hydrological, and meteorological factors, and natural hazards;
- (2) compatibility with present uses of land near the site;
- (3) socioeconomic effects on surrounding communities of operation of the licensed activity and of associated transportation of low-level radioactive waste;
- (4) the need for and alternatives to the proposed activity, including an alternative siting analysis prepared by the applicant;
- (5) the applicant's qualifications, including financial *and* ~~[;]~~ technical *qualifications*~~[;]~~ and *compliance history under the method for evaluation of compliance history developed by the commission under Section 5.754, Water Code* ~~[past operating practices];~~
- (6) background monitoring plans for the proposed site;
- (7) suitability of facilities associated with the proposed activities;
- (8) chemical, radiological, and biological characteristics of the low-level radioactive waste and waste classification under Section 401.053;
- (9) adequate insurance of the applicant to cover potential injury to any property or person, including potential injury from risks relating to transportation;
- (10) training programs for the applicant's employees;
- (11) a monitoring, record-keeping, and reporting program;
- (12) spill detection and cleanup plans for the licensed site and related to associated transportation of low-level radioactive waste;
- (13) decommissioning and postclosure care plans;
- (14) security plans;
- (15) worker monitoring and protection plans;
- (16) emergency plans; and
- (17) a monitoring program for applicants that includes prelicense and postlicense monitoring of background radioactive and chemical characteristics of the soils, groundwater, and vegetation.

ARTICLE 17. REGULATION OF DISPOSAL OF ANIMAL REMAINS

SECTION 17.01. Subchapter H, Chapter 80I, Occupations Code, is amended by adding Section 801.36I to read as follows:

Sec. 801.361. DISPOSAL OF ANIMAL REMAINS. (a) A veterinarian may dispose of the remains of an animal by burial or burning if:

- (1) the burial or burning occurs on property owned by the veterinarian; and*
- (2) the veterinarian does not charge for the burning or burial.*

(b) Notwithstanding any other law, the Texas Natural Resource Conservation Commission may not adopt a rule that prohibits conduct authorized by this section.

(c) This section applies only in a county with a population of less than 10,000.

ARTICLE 18. TRANSITIONS; EFFECTIVE DATE

SECTION 18.01. CHANGE OF AGENCY NAME. (a) Effective September 1, 2001. January 1, 2004:

(1) the name of the Texas Natural Resource Conservation Commission is changed to the Texas Commission on Environmental Quality, and all powers, duties, rights, and obligations of the Texas Natural Resource Conservation Commission are the powers, duties, rights, and obligations of the Texas Commission on Environmental Quality;

(2) a member of the Texas Natural Resource Conservation Commission is a member of the board of the Texas Commission on Environmental Quality;

(3) all personnel, equipment, data, documents, facilities, and other items of the Texas Natural Resource Conservation Commission are transferred to the agency under its new name; and

(4) any appropriation to the Texas Natural Resource Conservation Commission is automatically an appropriation to the Texas Commission on Environmental Quality.

(b) Effective September 1, 2001. January 1, 2004, a reference in law to the Texas Natural Resource Conservation Commission is a reference to the Texas Commission on Environmental Quality.

(c) The Texas Natural Resource Conservation Commission shall adopt a timetable for phasing in the change of the agency's name so as to minimize the fiscal impact of the name change. Until January 1, 2004, to allow for phasing in the change of the agency's name and in accordance with the timetable established as required by this section, the agency may perform any act authorized by law for the Texas Natural Resource Conservation Commission as the Texas Natural Resource Conservation Commission or as the Texas Commission on Environmental Quality. Any act of the Texas Natural Resource Conservation Commission acting as the Texas Commission on Environmental Quality after the effective date of this Act and before January 1, 2004, is an act of the Texas Natural Resource Conservation Commission.

SECTION 18.02. TRANSFER OF SAFE DRINKING WATER LABORATORY CERTIFICATION PROGRAM. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the safe drinking water laboratory certification program; and

(3) all appropriations to the Texas Department of Health pertaining to the safe drinking water laboratory certification program, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the safe drinking water laboratory certification program administered by the Texas Department of Health's bureau of laboratories are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) A certification issued by the Texas Department of Health for a safe drinking water laboratory before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section.

SECTION 18.03. TRANSFER OF ENVIRONMENTAL TESTING LABORATORY CERTIFICATION PROGRAM. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code;

(2) all personnel, equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the environmental testing laboratory certification program; and

(3) all appropriations to the Texas Department of Health pertaining to the environmental laboratory certification program, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the environmental testing laboratory certification program administered by the Texas Department of Health under Chapter 421, Health and Safety Code, are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

(c) A certification issued by the Texas Department of Health before September 1, 2001, remains in effect until the date it expires or is revoked, notwithstanding the change in law made by this section and by this Act to Chapter 421, Health and Safety Code.

(d) The change in law made by the addition by this Act of Section 5.127, Water Code, relating to the acceptance of environmental testing laboratory results by the Texas Natural Resource Conservation Commission, applies only to environmental testing laboratory results submitted to the commission on or after the third anniversary of the date on which the commission publishes notice in the Texas Register that the commission's environmental laboratory testing program established under Subchapter R, Chapter 5, Water Code, as added by this Act, has met the standards of the National Environmental Laboratory Accreditation Conference.

SECTION 18.04. CERTIFICATION OF WATER TREATMENT SPECIALISTS. (a) On the effective date of this Act, the following are transferred to the Texas Natural Resource Conservation Commission:

(1) all powers, duties, rights, and obligations of the Texas Department of Health relating to the certification of water treatment specialists administered by the Texas Department of Health under Section 3A, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes);

(2) all equipment, data, documents, facilities, and other items of the Texas Department of Health relating to the certification of water treatment specialists; and

(3) all appropriations to the Texas Department of Health pertaining to the certification of water treatment specialists, and all other state or federal money available to the Texas Department of Health for that program.

(b) On the effective date of this Act, Texas Department of Health rules relating to the certification of water treatment specialists are the rules of the Texas Natural Resource Conservation Commission until the commission adopts rules to govern that program.

SECTION 18.05. PERFORMANCE-BASED REGULATION. (a) Not later than February 1, 2002, the Texas Natural Resource Conservation Commission by rule shall establish the components of compliance history, as required by Section 5.753, Water Code, as added by this Act.

(b) Not later than September 1, 2002, the Texas Natural Resource Conservation Commission by rule shall establish the standards for the classification and use of compliance history, as required by Section 5.754, Water Code, as added by this Act.

(c) Not later than September 1, 2003, the Texas Natural Resource Conservation Commission by rule shall establish interim incentives as part of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.

(d) Not later than September 1, 2005, the Texas Natural Resource Conservation Commission by rule shall complete all rules necessary for the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act.

(e) The Texas Natural Resource Conservation Commission shall report to the 78th and 79th legislatures regarding the implementation of the strategically directed regulatory structure required by Section 5.755, Water Code, as added by this Act. The reports must include recommendations regarding statutory impediments to program implementation, progress in the development of rules and incentives, participation in the program, changes in federal statutes and policies affecting implementation of the program, and benefits accruing to the environment from the program. A report required by this subsection shall be filed not later than December 15 of the year preceding the year in which the legislative session begins.

(f) The changes made by this Act in the consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of permits under the following sections apply only to an application for the issuance, amendment, modification, or renewal of a permit submitted to the Texas Natural Resource Conservation Commission on or after September 1, 2002:

(1) Sections 5.754, 26.028, 26.0281, 26.040, and 27.018, Water Code; and

(2) Sections 361.084, 361.088, 361.089, 382.0518, 382.055, 382.056, 401.110, and 401.112, Health and Safety Code.

(g) For the purposes of consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to the issuance, amendment, modification, or renewal of a permit under the sections listed under Subsection (f) of this section, an application submitted before September 1, 2002, is governed by the law as it existed immediately before September 1, 2001, and the former law is continued in effect for that purpose.

(h) The changes made by this Act in the consideration of compliance history in decisions by the Texas Natural Resource Conservation Commission relating to inspections and flexible permitting under Subchapter Q, Chapter 5, Water Code, as added by this Act apply, effective September 1, 2002, to an action taken by the Texas Natural Resource Conservation Commission that is subject to those sections.

(i) The changes made by this Act in the definition of compliance history apply to an action taken by the Texas Natural Resource Conservation Commission on or after February 1, 2002. An action taken by the Texas Natural Resource Conservation Commission before February 1, 2002, is governed by the law in effect on the date the action is taken, and the former law is continued in effect for that purpose.

(j) The changes made by this Act in the consideration of compliance history in decisions of the Texas Natural Resource Conservation Commission relating to the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission apply only to a proceeding that is initiated or an action that is brought on or after September 1, 2002. A proceeding that is initiated or an action that is brought before September 1, 2002, is governed by the law in effect on the date the proceeding is initiated or action is brought, and the former law is continued in effect for that purpose.

(k) For the period between September 1, 2002, and September 1, 2005, the Texas Natural Resource Conservation Commission by rule may temporarily modify specific compliance history requirements to implement the regulatory structure being developed under Subchapter Q, Chapter 5, Water Code, as added by this Act. This section does not authorize the commission to modify existing statutory requirements relating to the use of compliance history in any enforcement proceeding.

SECTION 18.06. FEES. (a) The changes in law made by Sections 5.702 and 5.703, Water Code, as added by this Act, relating to the timely payment and adjustment of fees due the Texas

Natural Resource Conservation Commission, and by Section 5.706, Water Code, as added by this Act, relating to penalties and interest for delinquent fees, apply only to fees that are due on or after September 1, 2001.

(b) The change in law made by this Act to Sections 26.0135 and 26.0291, Water Code, relating to the consolidation of certain fees relating to water quality, takes effect September 1, 2002, and applies only to fees due on or after that date. The assessment and collection of fees due before the effective date of this Act are governed by the former law, and that law is continued in effect for that purpose. Water resource management account balances dedicated to a particular purpose under Sections 26.0135 and 26.0291, Water Code, as that law exists prior to the changes in law made by this Act, that have not been expended before the effective date of this Act may be used for the purposes authorized by this Act.

(c) Water resource management account balances dedicated to a particular purpose under the law as it exists prior to the changes in law made by this Act to redesignated Sections 5.701(e), (p), and (q), Water Code, and Sections 341.041(a), 366.058(a), and 366.059(b), Health and Safety Code, that have not been expended before the effective date of this Act may be used for the purposes authorized under this Act.

SECTION 18.07. REGULATORY FLEXIBILITY. The change in law made by Section 5.123, Water Code, as added by Chapter 1203, Acts of the 75th Legislature, Regular Session, 1997, relating to regulatory flexibility, as transferred, redesignated, and amended by this Act, applies only to an application for regulatory flexibility that is submitted to the Texas Natural Resource Conservation Commission on or after September 1, 2001.

SECTION 18.08. COMMISSIONER TRAINING. (a) As soon as practicable after September 1, 2001, but not later than December 1, 2001, the Texas Natural Resource Conservation Commission shall adopt rules to implement the training program for commission members required by Section 5.0535, Water Code, as added by this Act.

(b) The training requirements of Section 5.0535, Water Code, as added by this Act, apply only to a member of the commission who is appointed on or after January 1, 2002.

SECTION 18.09. EXECUTIVE DIRECTOR. The change in law made by this Act to Section 5.228, Water Code, relating to hearing appearances by the executive director of the Texas Natural Resource Conservation Commission, applies only to a hearing in which the executive director is named a party on or after September 1, 2001.

SECTION 18.10. INITIATION OF ACTION ON CITIZEN INFORMATION. (a) Not later than December 1, 2001, the Texas Natural Resource Conservation Commission shall adopt rules to implement the requirements of Section 7.0025, Water Code, as added by this Act, relating to the initiation of enforcement action by the commission based on information regarding an environmental problem submitted by a private individual.

(b) The change in law made by Section 7.0025, Water Code, as added by this Act, applies only to information regarding an environmental problem submitted to the Texas Natural Resource Conservation Commission on or after January 1, 2002.

SECTION 18.11. ADOPTION OF RULES REGARDING REGULATION OF CERTAIN FACILITIES AS SOLID WASTE FACILITIES. As soon as practicable after the effective date of this Act, the Texas Natural Resource Conservation Commission shall adopt rules as necessary to implement Section 361.119, Health and Safety Code, as added by this Act.

SECTION 18.12. JOINT INTERIM STUDY ON OFFICE OF NATURAL RESOURCE PUBLIC INTEREST COUNSEL. A joint interim study shall be conducted by a joint committee consisting of five members of the senate appointed by the lieutenant governor and five members of the house of representatives appointed by the speaker of the house. The committee shall study and report to the 78th Legislature on the issues associated with establishing an Office of Natural Resource Public Interest Counsel. The issues addressed shall include:

(1) the authority of the office of public interest counsel, including the authority to appeal decisions of the Texas Natural Resource Conservation Commission;

- (2) resources needed to carry out the functions of the office; and
- (3) the relationship of the office to other public assistance efforts in the agency and the need for an agency ombudsman.

SECTION 18.13. CONTAINMENT SYSTEMS REQUIRED FOR CERTAIN UNDERGROUND STORAGE TANKS. The change in law made by Section 26.3476, Water Code, as added by this Act, applies only to an underground storage tank system that is installed, upgraded, or replaced on or after the effective date of this Act.

SECTION 18.14. EMISSIONS EVENTS. The purpose of Sections 382.0215 and 382.0216, Health and Safety Code, as added by this Act, is to add new or more stringent requirements regarding upsets, startups, shutdowns, and maintenance. Those sections may not be construed as limiting the existing authority of the Texas Natural Resource Conservation Commission under Chapter 382, Health and Safety Code, to require the reporting or the permitting of the emission of air contaminants or to bring enforcement action for a violation of Chapter 382. Those sections are not intended to limit any right that may exist under federal law for a person to seek injunctive relief.

SECTION 18.15. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 2001.

ARTICLE 19. ENVIRONMENTAL HEALTH

SECTION 19.01. Title 5, Health and Safety Code, is amended by adding Subtitle G to read as follows:

SUBTITLE G. ENVIRONMENTAL HEALTH

CHAPTER 427. TEXAS ENVIRONMENTAL HEALTH INSTITUTE

Sec. 427.001. In this chapter:

- (1) "Board" means the Texas Board of Health.
- (2) "Commission" means the Texas Natural Resource Conservation Commission.
- (3) "Department" means the Texas Department of Health.
- (4) "Federal superfund site" means a site defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended.
- (5) "Immediately surrounding area" means an area determined by the commission to have been significantly exposed to one or more pollutants from the identified site.
- (6) "Institute" means the Texas Environmental Health Institute.

Sec. 427.002. TEXAS ENVIRONMENTAL HEALTH INSTITUTE. The commission shall enter into an agreement with the department to jointly establish the Texas Environmental Health Institute in order to examine ways to identify, treat, manage, prevent, and reduce health problems associated with environmental contamination.

Sec. 427.003. PURPOSES. The purposes of the institute are to:

- (1) develop a statewide plan to identify health conditions, related or potentially related to environmental contamination, of residents of this state who live or have lived within the immediately surrounding area of a federal superfund site or a state superfund site;
- (2) develop a plan to promote and protect the health and safety of residents in immediately surrounding areas by preventing or reducing their health risks from exposure to chemical and biological contaminants, radioactive materials, and other hazards in the environment and the workplace;

(3) develop a plan for informing and educating citizens in immediately surrounding areas about the identified health risks and ways to prevent or reduce exposure;

(4) identify private and federal funding opportunities for institute operations; and

(5) conduct, coordinate, or pursue funding for research concerning short-term and long-term impacts of exposure to environmental contamination.

Sec. 427.004. *PROGRAMS.* The commission and the department may establish at the institute any programs necessary to carry out the institute's established purposes under this chapter. The commission and the board may contract with public or private entities to carry out the institute's purposes.

Sec. 427.005. *GIFTS AND GRANTS.* The commission and the department may accept and administer gifts and grants to fund the institute from any individual, corporation, trust, or foundation or the United States, subject to limitations or conditions imposed by law.

Sec. 427.006. *PILOT PROJECT.* (a) The institute shall conduct a pilot project at the RSR West Dallas site and at the Cadillac Heights site. The project may include health screenings and assessments.

(b) The institute may enter into a memorandum of understanding with the commission and the department for toxic screening, pollutant assessment, toxicologist services, or any other appropriate service to be provided by the agencies, as necessary.

(c) The institute shall use information gathered through the pilot project to assist in developing its plan for implementing the institute's purposes under this chapter.

(d) The pilot project shall be conducted for two years beginning on September 1, 2001. The institute shall submit to the 78th Legislature a report on the results of the pilot project and the development and implementation of the statewide plan and the further organization of the institute.

ARTICLE 20. OTHER REGULATORY PROVISIONS

SECTION 20.01. Subchapter K, Chapter 13, Water Code, is amended by adding Section 13.4115 to read as follows:

Sec. 13.4115. *ACTION TO REQUIRE ADJUSTMENT TO CONSUMER CHARGE; PENALTY.* In regard to a customer complaint arising out of a charge made by a public utility, if the executive director finds that the utility has failed to make the proper adjustment to the customer's bill after the conclusion of the complaint process established by the commission, the commission may issue an order requiring the utility to make the adjustment. Failure to comply with the order within 30 days of receiving the order is a violation for which the commission may impose an administrative penalty under Section 13.4151.

SECTION 20.02. Section 51.149, Water Code, is amended to read as follows:

Sec. 51.149. *CONTRACTS.* (a) Notwithstanding Section 49.108(e), no approval other than that specified in Subsection (c) need be obtained in order for a contract between a district and a municipality to be valid, binding, and enforceable against all parties to the contract. After approval by a majority of the electors voting at an election conducted in the manner of a bond election, a district may make payments under a contract from taxes for debt that does not exceed 30 years.

(b) ~~(d)~~ A contract may provide that the district will make payments under the contract from proceeds from the sale of notes or bonds, from taxes, from any other income of the district, or from any combination of these.

(c) ~~(e)~~ A district may make payments under a contract from taxes, other than maintenance taxes, after the provisions of the contract have been approved by a majority of the electors voting at an election held for that purpose.

(d) [(f)] Any contract election may be held at the same time as and in conjunction with an election to issue bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

SECTION 20.03. Subchapter D, Chapter 366, Health and Safety Code, is amended by adding Section 366.0512 to read as follows:

Sec. 366.0512. MULTIPLE TREATMENT SYSTEMS. A multiple system of treatment devices and disposal facilities may be permitted as an on-site disposal system under this chapter if the system:

- (1) is located on a tract of land of at least 100 acres in size;*
- (2) produces not more than 5,000 gallons a day on an annual average basis;*
- (3) is used only on a seasonal or intermittent basis; and*
- (4) is used only for disposal of sewage produced on the tract of land on which any part of the system is located.*

Passed by the House on April 20, 2001, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 2912 on May 17, 2001, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2912 on May 27, 2001: Yeas 100, Nays 42, 2 present, not voting; and that the House adopted H.C.R. No. 331 authorizing certain corrections in H.B. No. 2912 on May 28, 2001, by a non-record vote; passed by the Senate, with amendments, on May 14, 2001, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2912 on May 27, 2001, by a viva-voce vote; and that the Senate adopted H.C.R. No. 331 authorizing certain corrections in H.B. No. 2912 on May 28, 2001, by a viva-voce vote.

Approved June 14, 2001.

Effective September 1, 2001, unless otherwise provided.

CHAPTER 966

S.B. No. 2

AN ACT

relating to the development and management of the water resources of the state, including the ratification of the creation of certain groundwater conservation districts; providing penalties.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1. TEXAS WATER ADVISORY COUNCIL

SECTION 1.01. Subtitle A, Title 2, Water Code, is amended by adding Chapter 9 to read as follows:

CHAPTER 9. TEXAS WATER ADVISORY COUNCIL

Sec. 9.001. DEFINITIONS. In this chapter:

- (1) "Authority" means an entity listed in Section 9.010(b).*
- (2) "Board" means the governing body of an authority.*
- (3) "Commission" means the Texas Natural Resource Conservation Commission.*